

JOSEPH A. STEWART, 7315
STEPHEN G.K. KANESHIRO, 11295
REECE Y. TANAKA, 11841
Kobayashi Sugita & Goda, LLP
First Hawaiian Center
999 Bishop Street, Suite 2600
Honolulu, Hawaii 96813
Telephone: (808) 535-5700
Facsimile: (808) 535-5799
jas@ksglaw.com
sgk@ksglaw.com
ryt@ksglaw.com

MEGAN A. SUEHIRO, 9582
Morgan, Lewis & Bockius LLP
300 South Grand Ave., 22nd Floor
Los Angeles, CA 90071-3132
Telephone: (213) 612-2500
Facsimile: (213) 612-2501
megan.suehiro@morganlewis.com

ELLA FOLEY GANNON (*pro hac vice to be filed*)
DAVID K. BROWN (*pro hac vice to be filed*)
Morgan, Lewis & Bockius LLP
One Market, Spear Street Tower
San Francisco, CA 94105
Telephone: (415) 442-1000
Facsimile: (415) 442-1001
ella.gannon@morganlewis.com
david.brown@morganlewis.com

JOHN K. GISLESON (*pro hac vice to be filed*)
MATTHEW H. SEPP (*pro hac vice to be filed*)
DANIEL R. MCTIERNAN (*pro hac vice to be filed*)
Morgan, Lewis & Bockius LLP
One Oxford Centre, 32nd Floor
Pittsburgh, PA 15219
Telephone: (412) 560-3300
Facsimile: (412) 560-7001
john.gisleson@morganlewis.com

matthew.sepp@morganlewis.com
daniel.mctiernan@morganlewis.com

*Attorneys for Plaintiff
Board of Water Supply,
City & County of Honolulu*

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF HAWAI‘I**

BOARD OF WATER SUPPLY, CITY
AND COUNTY OF HONOLULU,

Plaintiff,

vs.

UNITED STATES OF AMERICA,

Defendant.

ELECTRONICALLY FILED

CIVIL NO. _____

(Federal Tort Claims Act; Hawai‘i
Environmental Response Law)

**COMPLAINT; JURY DEMAND;
SUMMONS**

COMPLAINT

Plaintiff BOARD OF WATER SUPPLY, CITY AND COUNTY OF HONOLULU (“BWS”), by and through its attorneys, and pursuant to the provisions of the Federal Tort Claims Act, Title 28, U.S.C. §§ 1346(b), 2671, *et seq.*, files this complaint against Defendant UNITED STATES OF AMERICA for negligence, nuisance, and trespass resulting in damages where the government of the United States of America, if a private party, would be liable to the BWS. The

BWS also asserts a claim against the United States for violation of the Hawai‘i Environmental Response Law (“**HERL**”), Hawai‘i Revised Statutes chapter 128D.

This case involves tortious conduct by the United States of America, and more specifically, the United States Department of the Navy (“**Navy**”), in causing and/or allowing contaminant releases to enter O‘ahu’s EPA-designated sole source aquifer, impacting the water resources upon which the BWS relies and the BWS water distribution system. The Navy has caused, allowed, and/or failed to contain releases into the environment of substantial but indeterminate quantities of jet propellant fuel, per- and polyfluoroalkyl substances (“**PFAS**”), and other contaminants (collectively, “**Contaminants**” or “**Released Contaminants**”) that have entered the sole source aquifer (“**Contaminant Releases**”) from which the BWS withdraws potable groundwater for public use and consumption. This complaint seeks to hold the United States and the Navy accountable for its Contaminant Releases of any nature that have impacted and/or threatened the BWS’s water supply and caused the BWS both to shut down its impacted infrastructure and to incur fees, costs, and expenses to respond to the Navy’s Contaminant Releases, both actual and threatened.

I. INTRODUCTION

KA WAI OLA – WATER FOR LIFE

1. Ka Wai Ola, Water for Life, is the BWS’s guiding principle, its declaration of the importance of water, and a reflection of the BWS’s commitment as steward of this precious resource to ensure a safe, dependable, and affordable water supply for present and future generations of the people of Hawai‘i.

2. Hawaiian Proverb ‘Ōlelo No‘eau #2802 captures the significance and importance of clean water to life in Hawai‘i: “Ua ka ua, ola ka nohona o ka ‘āina kula,” which translates to “The rain pours, life comes to the plains.” Simply put, clean water is essential for life and to the BWS’s mission.

3. Consistent with that Proverb, Article XI, Section 9 of the Hawai‘i State Constitution enshrines these principles and guarantees the citizens of Hawai‘i the substantive “right to a clean and healthful environment,” including clean and healthful groundwater.

4. The BWS is a municipal entity that maintains and operates a drinking water distribution system, including, among other assets, the Hālawa Shaft and certain ‘Aiea and Hālawa drinking water wells. The BWS’s Hālawa Shaft (2354-01), ‘Aiea Wells 1 and 2 (2355-06 and 2355-07), and Hālawa Wells 1, 2 and 3 (2255-39, 2255-37, and 2255-38) are hereinafter referred to as the “**Impacted Water Sources.**”

5. The BWS's Impacted Water Sources draw from the Southern O'ahu Basal Aquifer (the "**Aquifer**"), an EPA-designated sole source aquifer that provides the majority of potable water for O'ahu, Hawai'i. Because the BWS draws its water supply from an EPA-designated sole source aquifer, the BWS lacks reasonably available alternative drinking water sources.

6. The BWS's Impacted Water Sources are all located less than two miles from the Red Hill Bulk Fuel Storage Facility ("**Red Hill Facility**" or "**Facility**") operated by the Navy. The Facility is located in a highly complex and sensitive geologic environment directly above the Aquifer.

7. The Navy utilizes the same Aquifer as the BWS to supply potable water to Navy personnel and their family members working and living at Joint Base Pearl Harbor-Hickam ("**JBPHH**") through the Navy's Red Hill Shaft (2254-01), 'Aiea-Hālawa Shaft (2255-32), and Waiawa Shaft (2558-010).

8. The groundwater beneath and surrounding the Red Hill Facility is hydraulically connected to the BWS's groundwater supply, such that groundwater contamination by the Navy is likely to travel to and impact the BWS's Impacted Water Sources, contaminating the water supply from which the BWS draws and impairing its ability to provide clean, potable drinking water to its ratepayers, consumers, and users. Indeed, hydraulic studies completed by the United States Geological Survey in 2018, 2021, and 2022 demonstrate that pumping from the

Navy's Red Hill Shaft is hydraulically connected to the BWS's nearby Hālawā Shaft.

9. For decades, the Red Hill Facility has supported United States military operations in the Pacific by all branches of service. It was originally constructed in the early 1940s to provide fuel for United States armed forces during World War II and has been in continuous use until recently.

10. The Red Hill Facility consists of 20 enormous underground storage tanks ("**Tanks**" or "**USTs**"), each 250 feet tall and 100 feet in diameter and capable of storing 12.5 million gallons of fuel. The Tanks were built into cavities mined within a volcanic mountain ridge (Red Hill, or Kapūkakī as it is known among native Hawaiians) near Pearl Harbor to keep the facility hidden and safe from aerial attack. These Tanks were designed and constructed with the tank bottoms only approximately 100 feet above the Aquifer.

11. The size and scope of the Tanks are unprecedented. By way of example, a typical gas station holds around 25,000 gallons of fuel; the Red Hill Facility could store *10,000 times* that amount—250,000,000 gallons of fuel.

12. While the Navy historically assured the residents and visitors of O'ahu that the Red Hill Facility did not pose any risks to drinking water supplies, the Navy's wrongful and tortious actions have caused, and continue to cause, contamination of the Aquifer, forcing the BWS to incur significant and substantial

expenses to respond to the Navy's actual and threatened Contaminant Releases from multiple components of the Red Hill Facility—including from the Tanks, connected underground piping, underground ancillary equipment, and containment system (collectively, the “**Tank System**” or “**UST System**”).

13. On information and belief, the Tank System has been leaking for decades, with more recent releases exacerbating further this environmental crisis. The Navy has negligently failed to inspect, maintain, and operate the Tank System, causing and contributing to the Contaminant Releases.

14. At least 76 fuel release incidents have occurred at the Red Hill Facility dating back to the late 1940s, potentially involving in excess of one million gallons of fuel released into the environment. On information and belief, the actual quantity is substantially higher based on the Navy's failure to properly inspect and maintain the Tank System, investigate its releases, and accurately quantify Released Contaminants.

15. In January 2014, the Navy released into the environment approximately 27,000 gallons of fuel from one of the fuel tanks (Tank 5). In response, the Navy and the Defense Logistics Agency (“**DLA**”) (an operator of the Facility with the Navy and the owner of the fuel stored at the Facility) entered into an Administrative Order on Consent (“**AOC**”) in September 2015 with the Hawai'i Department of Health (“**DOH**”) and the U.S. Environmental Protection Agency

(“EPA”) requiring the Navy to conduct certain investigations and other work to address the numerous fuel releases from the Facility. The AOC designates the BWS as a “Subject Matter Expert” concerning the Aquifer and the Navy’s deliverables under the AOC, demonstrating the BWS’s direct interest in and impact from the Navy’s Contaminant Releases. The AOC has remained in effect until the present because of the Navy’s inability to comply with the terms of the AOC.

16. In May 2019, the Navy submitted an application seeking a five-year permit to operate the Red Hill Facility, including its UST System, as required under Hawai‘i law. The BWS, as well as the Sierra Club of Hawai‘i, objected to the Navy’s application as interested parties and requested a contested case hearing because, among other things, the Navy failed to demonstrate that its Tank System would not leak and negatively impact the Aquifer. In February 2021, a contested case hearing was held. However, because another substantial Contaminant Release occurred at the Red Hill Facility in May 2021, the proceeding remained open.

17. Despite the Navy’s assurances to the contrary, the Navy continued to release Contaminants into the environment, including the following known events:

- a. In May 2021, a release of approximately 20,000 gallons of jet fuel occurred in the Red Hill Facility lower access tunnel during refilling of one of the tanks.
- b. In July 2021, a corrosion-induced hole in a pipeline led to a fuel release at the Red Hill Facility’s Kilo Pier.

- c. On November 20, 2021, as a result of the Navy's negligent conduct, the Navy's fire suppression system at the Red Hill Facility released approximately 19,000 gallons of jet fuel. Residents of JBPHH reported illnesses and other concerns about their drinking water, but the Navy steadfastly disputed any health risks and assured residents that the water was safe for drinking and other potable water uses.
- d. On November 29, 2022, the Navy released into the environment approximately 1,300 gallons of fire suppression foam (Aqueous Film Forming Foam ("AFFF")) concentrate liquid at the Adit 6 near the top of a tunnel at the Red Hill Facility. The released foam concentrate liquid contained "forever chemicals" known as PFAS. As discussed below, this was not an isolated incident. On December 7, 2019, a spill of up to 1,500 gallons of AFFF was released from the Red Hill Facility into the environment, requiring the surrounding contaminated soil to be excavated. Then, on September 29, 2020, the fire suppression system in an underground pump house at the Red Hill Facility was activated due to "inadvertent triggering" of the fire suppression system. As a result, approximately 5,000 gallons of AFFF concentrate liquid was released. On October 26, 2021, a water pipeline ruptured releasing 300,000 gallons of water at the Red Hill Fuel Oil Recovery Facility. Navy officials believe that AFFF could have been absorbed in the soil from the December 7, 2019 AFFF incident and mixed with the water from the 300,000-gallon release on October 26, 2021.

18. The Navy was spectacularly wrong about its November 20, 2021 release, including how it characterized and reported the cause and extent of the contamination. Indeed, the November 20, 2021 release caused the Navy to cease operation of both its Red Hill Shaft drinking water source (the primary source from which it supplied JBPHH drinking water) and its 'Aiea-Hālawa Shaft drinking water source. Both the Navy's Red Hill and 'Aiea-Hālawa Shafts ("Navy

Impacted Water Sources”) have not supplied water to their water systems serving JBPHH since the contamination crisis in November 2021. ‘Aiea-Hālawa Shaft has remained shut off since then. Red Hill Shaft is pumping to discharge into the Hālawa Stream after granular activated carbon (GAC) filtration in an attempt to capture petroleum contamination in the Aquifer. JBPHH’s water system is supplied by its only remaining drinking water source—the Waiawa Shaft.

19. For at least a decade, the Navy has admitted its responsibility for groundwater contamination in the area of the Red Hill Facility. As the Navy stated in an internal 2010 Audit Service assessment: (a) “Groundwater contamination exists around the underground storage tanks (USTs) at [the Red Hill Facility] because of irregular maintenance and insufficient inspection over the life of the fuel tanks”; and (b) “[T]he Navy cannot detect slow, chronic fuel releases from the [Red Hill Facility] tanks because current methods are not effective for that purpose.” (Aug. 16, 2010 Naval Audit Service, Audit Report at 9). The Navy and the regulators recognized that the Red Hill Facility posed a risk to the Navy’s Red Hill Shaft, requiring the development of a groundwater protection plan in or around 2007. Indeed, nearly all rock cores taken below each of the 20 Tanks in the 1990s showed evidence of fuel contamination, indicating clear evidence of leaks from the Red Hill Facility.

20. The Navy admitted its responsibility for the devastating May and November 2021 releases, stating in a 2022 Command Investigation Report that, among other things:

- a. “On 6 May 2021, Red Hill operators improperly executed a fuel transfer procedure, resulting in two piping joint ruptures and a subsequent JP-5 fuel spill. Although unknown at the time, a fire suppression system sump pump transferred most of the fuel into a retention line, where it remained until 20 November 2021.”
- b. “On 20 November 2021, as established in the Cavanaugh Report, a Red Hill watch stander inadvertently struck a low point drain valve in the AFFF retention line with the passenger cart of a train, cracking the PVC pipe and spilling up to 19,377 gallons of fuel deposited there on 6 May. Up to 5,542 gallons of fuel remain unrecovered, with some portion of that fuel contaminating the Red Hill well and the Navy drinking water distribution system.”
- c. “The contamination of drinking water from the Red Hill Shaft was the result of the Navy’s ineffective immediate responses to the 6 May and 20 November 2021 fuel releases at the Red Hill [Facility], and failure to resolve with urgency deficiencies in system design and construction, system knowledge, and incident response training. These deficiencies endured due to seams in accountability and a failure to learn from prior incidents that falls unacceptably short of Navy standards for leadership, ownership, and the safeguarding of our communities.”

21. The Navy is working to reactivate the Navy Impacted Water Sources to provide potable water to the JBPHH water systems, but only after it installs a temporary water treatment system designed to filter Released Contaminants, including TPH (total petroleum hydrocarbons), PAH (polycyclic aromatic hydrocarbons), and PFAS (per- and polyfluoroalkyl substances). Upon

information and belief, the estimated cost to construct and install the temporary water treatment system for the Navy's Red Hill Shaft alone will exceed \$500 million, with an estimated annual cost of \$15 million to maintain and operate this temporary system.

22. Given the Navy's numerous releases, the need to discontinue use of its Navy Impacted Water Sources, the consistently inaccurate and unreliable information disseminated by the Navy about its Contaminant Releases, that the BWS shares the Aquifer with the Navy, and the close proximity and hydraulic connectivity between the BWS Impacted Water Sources and the Navy Impacted Water Sources, the BWS was compelled to shut down in response to the November 2021 releases its own Hālawā Shaft (closest to the Red Hill Facility) as well as certain 'Aiea and Hālawā drinking water wells to protect its water supply and prevent, limit, and mitigate the Navy's Contaminants entering its water supply. The BWS has incurred significant damages to date and expects to incur significant additional costs in the future as a direct, natural, and foreseeable result of the Navy's actions.

23. In response to the Navy's releases, the DOH issued two emergency orders requiring the defueling and permanent closure of the Red Hill Facility. On June 2, 2023, the Navy, the DLA, and the EPA executed an administrative consent order requiring the defueling and closure of the Facility.

24. While these actions address the future of the Red Hill Facility and the Navy's drinking water system, they fail to adequately address the Released Contaminants remaining in the environment. Nor do they make the BWS whole for the necessary shutdown of its Impacted Water Sources or ensure that the BWS will have access to safe and dependable drinking water in the future for the benefit of its customers and other users.

25. Moreover, the Navy has continuously failed to comply with the 2015 AOC. In particular, despite the passage of almost 10 years, the Navy has failed to, among other things, properly create the required groundwater flow and contaminant fate and transport models necessary to perform remediation and inform the public—including the BWS—of the health risks to their drinking water from the Navy's Contaminant Releases. Instead, the Navy has generated objectively flawed and ineffective models criticized by the EPA, the DOH, and the BWS, while unnecessarily redacting and withholding from the public (including the BWS) basic data concerning its Contaminant Releases, the hydrogeology in the area of the Facility, and the fate and transport of the Contaminants that the Navy has repeatedly released to the environment.

26. While the Navy has publicly stated that it is taking accountability for its failings at the Red Hill Facility, it has refused to accept its liability to the BWS or compensate the BWS for the significant damages the Navy caused the BWS to

incur, and continue to incur, as a result of the Navy's wrongful and tortious conduct.

II. JURISDICTION AND VENUE

27. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331, as the BWS's claims arise under the laws of the United States. This Court also has jurisdiction to grant relief in this action pursuant to 28 U.S.C. § 1346(b)(1), as the BWS brings claims under the Federal Tort Claims Act (“**FTCA**”).

28. The Court has supplemental jurisdiction over the BWS's HERL claim pursuant to 28 U.S.C. § 1367, as it is related to claims in the action within the Court's original jurisdiction and forms part of the same case or controversy.

29. Venue is proper in the District of Hawai'i pursuant to 28 U.S.C. § 1402(b) because the United States is a defendant, and this is the judicial district where a substantial part of the events or omissions giving rise to the claim occurred, and a substantial part of the property that is the subject of the action is situated.

30. Under the FTCA, the United States is liable for injury caused by the tortious and wrongful acts and omissions of its employees while acting within the course and scope of their office or employment, under the circumstances where the United States, if a private person, would be liable to the BWS. The United States

is liable for the actions and inactions of the Navy and DLA at issue in this litigation.

31. The United States may be served with process in accordance with Rule 4(i) of the Federal Rules of Civil Procedure. Service is effected by serving a copy of the Summons and Complaint on the United States Attorney for the District of Hawai‘i by certified mail, return receipt requested at their office:

United States Attorney’s Office
ATTN: Civil Process Clerk
300 Ala Moana Blvd., # 6-100
Honolulu, HI 96850

32. Service is also effected by serving a copy of the Summons and Complaint on Pamela Bondi, Attorney General of the United States by certified mail, return receipt requested at:

The United States Attorney General’s Office
ATTN: Civil Process Clerk
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

III. THE PARTIES

33. Plaintiff BWS was created by Act 96 of the 1929 Legislature and is a financially self-sufficient, semi-autonomous agency of the City and County of Honolulu. The BWS manages O‘ahu’s municipal drinking water systems, depends on groundwater resources in aquifers, and provides residents with safe and dependable water service at a reasonable cost.

34. Defendant is the United States of America. The United States Department of Defense (“**DOD**”) is an executive branch department of the United States government. The United States Department of the Navy is a branch of the DOD. The Defense Logistics Agency is a combat logistics support agency of the DOD. The Defense Logistics Agency and its respective employees, agents, and persons under their direction or supervision are referenced collectively herein as “**DLA**.” The United States Department of the Navy and its respective employees, agents, and persons under their direction or supervision are referenced collectively herein as “**Navy**.” Those entities are collectively referenced as “**the United States**.”

IV. FACTS

A. Board of Water Supply, City and County of Honolulu

35. The BWS is the largest municipal drinking water utility in the State of Hawai‘i and is responsible for managing O‘ahu’s municipal water sources and distribution system.

36. The BWS distributes an average of approximately 145 million gallons of potable water each day to roughly one million customers on O‘ahu. To ensure that the water it distributes is safe and potable, the BWS carefully and proactively manages and tests its water resources and associated system of approximately 2,100 miles of pipeline that service nearly every community on O‘ahu.

37. The BWS has a Public Trust responsibility to protect the water resources that it manages. Public Trust is the principle enshrined in the Hawai‘i Constitution and state law recognizing that water is held in trust by the State of Hawai‘i for present and future generations. “For the benefit of present and future generations, the State and its political subdivisions shall conserve and protect Hawai‘i’s natural beauty and all natural resources, including land, water, air, minerals, and energy sources, and shall promote the development and utilization of these resources in a manner consistent with their conservation and in furtherance of the self-sufficiency of the State. All public natural resources are held in trust by the State for the benefit of the people.” Haw. Const. art. XI, § 1.

38. The Revised Charter of the City and County of Honolulu, Article VII, Sections 7-103 and 7-117, empowers and obligates the BWS to manage, control, and operate its water systems and infrastructure and to take appropriate legal actions to protect the State’s drinking water resources and the interests of the BWS and its constituents.

39. State policy for water resources in Hawai‘i is likewise directed toward achieving the highest water quality consistent with maximum benefit to the people of the State and “shall be liberally interpreted to obtain maximum beneficial use of the waters of the State” Haw. Rev. Stat. (“**H.R.S.**”) § 174C-2(c). Pertinent here, drinking water is the highest beneficial use of groundwater.

40. The State of Hawai‘i Environmental Policy states that it is the policy of the state to “[c]onserve the natural resources, so that land, water, mineral, visual, air and other natural resources are protected by controlling pollution, by preserving or augmenting natural resources, and by safeguarding the State’s unique natural environmental characteristics in a manner which will foster and promote the general welfare, create and maintain conditions under which humanity and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of the people of Hawai‘i.” H.R.S. § 344-3.

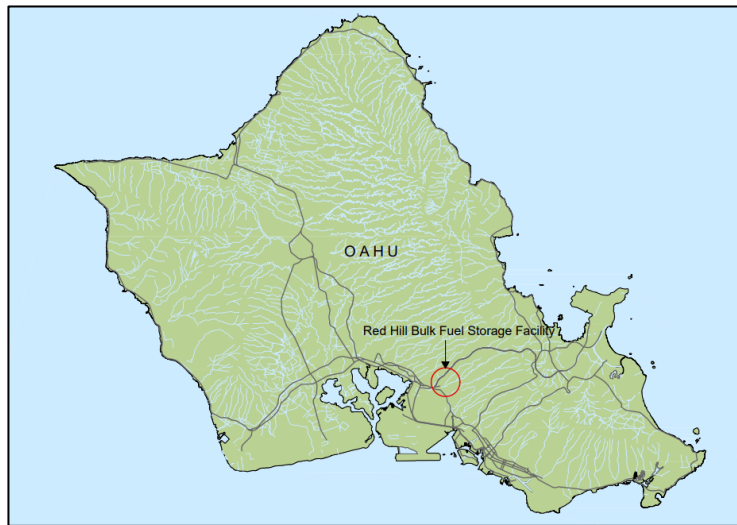
41. H.R.S. § 344-4(2)(A) and (D) further identify state environmental policy, stating that it is state policy to “[e]ncourage management practices which conserve and fully utilize all natural resources” and “[e]ncourage management practices which conserve and protect watersheds and water sources, forest, and open space areas.”

42. The BWS thus has constitutional and statutory duties to protect all of its water sources, including the Impacted Water Sources, from the Navy’s Released Contaminants and to refrain from distributing water impacted by those Contaminants. These duties require the BWS, in response to the Navy’s Contaminant Releases and threatened releases, to thoroughly investigate its water resources and to shut down its Impacted Water Sources, if necessary or

appropriate, to conserve, protect, and safeguard groundwater in the Aquifer for the benefit of the public and the environment.

B. History and Description of the Red Hill Bulk Fuel Storage Facility

43. The Red Hill Facility is located on the island of O‘ahu approximately 2.5 miles northeast of Pearl Harbor.



(Red Hill Bulk Fuel Storage Facility Final Technical Report, Aug. 2007, at Figure 1-1).

44. The Red Hill Facility occupies approximately 144 acres of land along the western edge of the Ko‘olau Mountain Range situated on a topographic ridge that divides the Hālawā Valley and the Moanalua Valley.

45. The Red Hill Facility consists of twenty field-constructed underground storage tanks. Each UST is approximately 250 feet tall, 100 feet in diameter, and provides a fuel storage capacity of up to 12.5 to 12.7 million gallons of jet or marine fuel.

46. The Red Hill Facility includes seven miles of tunnels with twenty-nine miles of pipelines, ventilation systems with air intakes and exhaust portals, a pumphouse, control room, surge tanks, slop oil and oil recovery facility, and a pier that can fuel ships. It also includes the Navy's Red Hill Shaft, which serves as a drinking water source for the JBPHH.

47. The "Red Hill Facility," as used herein, broadly refers to the entire facility, including the 20 underground storage tanks, tunnels, above and underground pipelines and associated valves, underground drain systems, ventilation systems, pumphouse, control room, surge tanks and associated piping, holding tanks, leach tank system, slop oil and oil recovery facility, Oily Waste Disposal Facility (EPA Facility ID# HI4170090076), and the Red Hill Shaft. The term includes any component of the Facility where Contaminants were released.

48. The Navy generally stored fuel in 14 or 15 of the USTs, with a total capacity of over 187 million gallons of fuel. Prior to the December 2021 Emergency Order requiring the Navy to cease all operations at the Red Hill Facility and defuel the operational USTs, two of the USTs (Tanks 1 and 19) were empty and no longer in active use. Another four USTs were empty as part of the Navy's clean, inspect, and repair program.

49. The Navy stored Jet Propulsion Fuel No. 5 (JP-5), Jet Propulsion Fuel No. 8 (JP-8), and marine diesel (F-76) at the Red Hill Facility. Historic fuel

storage has included diesel oil, Navy Special Fuel Oil, Navy distillate (ND), F-76, aviation gas, motor gas, JP-5, and JP-8.

50. Marine diesel and jet fuels in general, “and Jet Propulsion Fuels 5 and 8 (JP-5 and JP-8) in particular, are composed of a broad, dynamic and heterogenous mixture of chemical constituents. Chronic exposure to these constituents can be harmful to human health. The rates at which these constituents naturally degrade in the environment are highly variable.” (2015 AOC at 6). Further, upon information and belief, JP-5 stored at the Red Hill Facility also contained various additives, including de-icing agents.

51. The Navy stored at the Facility approximately 27 percent of all the Navy fuel in the Pacific, 16 percent of all the Navy fuel worldwide, and 5 percent of all DOD fuel. It provided fuel to support the Navy, U.S. Air Force, U.S. Marine Corps, U.S. Army, Hawai‘i Army National Guard, and U.S. Coast Guard.

52. The USTs are connected to three pipelines that run for approximately 2.5 miles through an underground access tunnel to the underground pumphouse at JBPHH. A pumping station within the underground pumphouse controls tank filling and dispenses fuel to ships and Hickam Airfield. Fuel is also unloaded at fueling piers at Pearl Harbor and pumped inland and uphill to the USTs, and, when needed, the fuel stored in the USTs could be moved from the Red Hill Facility to Pearl Harbor via gravity.

53. The Red Hill Facility, including the upper and lower underground access tunnels where the USTs can be accessed, utilizes a fire suppression system containing AFFF to extinguish fires, especially those involving flammable liquids such as fuel. AFFF contains PFAS. Upon information and belief, AFFF has been stored at the Red Hill Facility since the 1960s. Currently, there is an active and ongoing CERCLA (Comprehensive Environmental Response, Compensation, and Liability Act) investigation at the Red Hill Facility, which is being overseen by the EPA and the DOH relating (at a minimum) to PFAS.

54. In March 2022, the DOD announced the closure of the Red Hill Facility. Since that time, the Navy has removed the vast majority of the fuel from the USTs. The USTs therefore are no longer a component of a facility that is used for national security purposes.

C. Construction, Maintenance, and Condition of the USTs

55. Construction of the Red Hill Facility began in secret in December 1940, and its existence remained hidden until it was declassified in 1995.

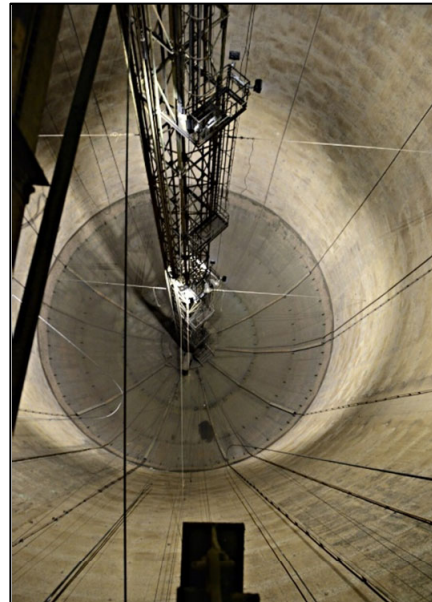
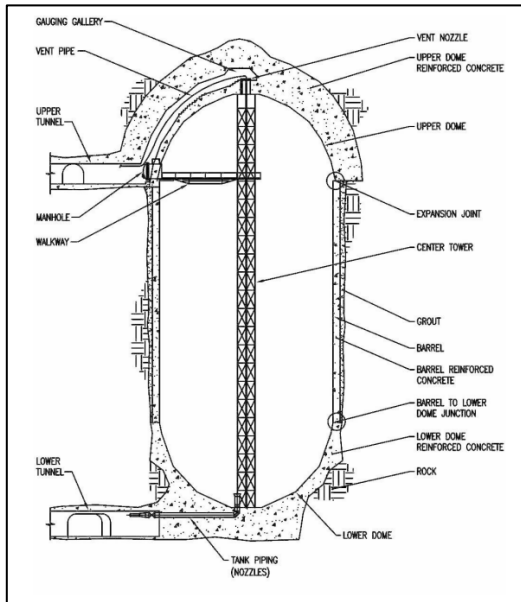
56. The USTs were constructed in parallel series of two rows sloping south by southwest towards Pearl Harbor.



(Red Hill Facility USTs and surrounding infrastructure, Red Hill Bulk Fuel Storage Facility Final Technical Report, Aug. 2007, at Figure 1-3).

57. The Tanks were constructed by mining into the mountain ridge to create cavities for concrete tanks lined with $\frac{1}{4}$ -inch and $\frac{1}{2}$ -inch steel plates welded together. The exterior of the steel plate liners, as well as their concrete shells, could not be accessed or inspected for corrosion, and were not adequately repaired, maintained, or upgraded since the original construction nearly 80 years ago. In December 2021, a DOH Hearing Officer found that the “combination of the manual nature of the inspections, the dependence on the ability/competence of individual inspectors, the presence of an internal coating on the steel liner, the difficult working conditions, and the sheer size of the facility” were “detrimental to adequate, consistent, and reliable inspections and inspections results, which are required to prevent releases from the [tanks].” (DOH Hearing Officer’s Proposed

Decision and Order, Findings of Fact, and Conclusions of Law (Dec. 27, 2021) 14 (¶ 64(f)), affirmed by DOH, Final Decision, Order, Findings of Fact, and Conclusions of Law (Jan. 3, 2022) (“**12/27/2021 Decision**”).



*Graphic of Red Hill UST, Red Hill Tank Closure Plan Analysis of Alternatives & Concept Design to Close in Place, Dec. 20, 2022, Fig. 1.

*Inside view of Red Hill UST, <https://www.Hawaiipublicradio.org/local-news/2022-05-31/red-hill-fuel-tanks-need-repairs-before-draining-navy-military>

58. In order to uphold Hawai‘i constitutional requirements of public trust and a “clean and healthful environment,” all Hawai‘i operators, including the Navy, are subject to Hawai‘i state law, statutes, and regulations related to environmental policy.

59. As the owner and operator of the Red Hill UST System, the Navy had a continuing obligation to comply with various regulatory requirements, including but not limited to, the following:

- a. “(b) Underground storage tank and tank system standards shall include, but are not limited to the following specifications: (1) The tank and tank system shall be designed, constructed, installed, upgraded, *maintained, repaired, and operated to prevent releases of the stored regulated substances* for the operational life of the tank or tank system...” H.R.S. § 342L-32 (emphasis added).
- b. “The department, pursuant to chapter 91, shall adopt standards of performance for maintaining a release detection system, including, but not limited to, inventory control, tightness testing, and any other methods designed to identify releases from the underground storage tank or tank system in a manner consistent with the protection of human health and the environment.” H.R.S. § 342L-33.

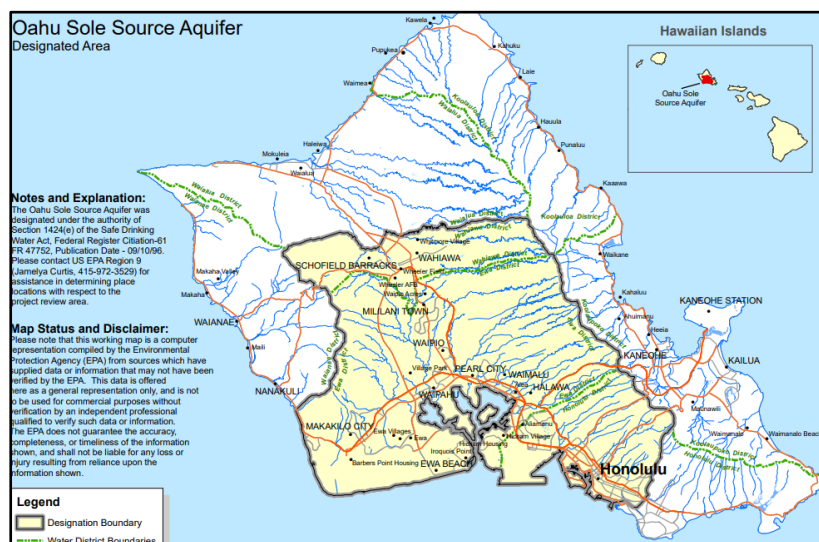
Consequently, the Navy has at all relevant times been required to maintain and operate its tanks and tank systems “to prevent releases of the stored regulated substances for the operational life of the tank or tank system” and to “maintain[] a release detection system, including, but not limited to, inventory control, tightness testing, and any other methods designed to identify releases from the underground storage tank or tank system in a manner consistent with the protection of human health and the environment.” H.R.S. §§ 342L-32 & 33.

60. Despite these requirements, an internal Navy audit found that groundwater contamination around the Tanks exists due to “irregular maintenance” and “insufficient inspection” over the life of the Tanks, and that the Navy cannot detect and mitigate the fuel releases in a timely manner. (Aug. 16, 2010 Naval Audit Service, Audit Report).

61. All or substantially all of the 20 USTs have released Contaminants as evidenced by the Navy's own soil vapor monitoring, diagonal borings under the USTs, identification of staining beneath 19 USTs, groundwater monitoring well data, investigations, and internal documents. Further, rock, vapor, and groundwater samples have shown that fuel has migrated from the Facility through the environment and into the Aquifer. And as discussed more fully below, there have been numerous fuel releases from the USTs dating back to the 1940s, resulting in migration of Contaminants to the Aquifer.

D. O'ahu's Irreplaceable Sole Source Aquifer

62. According to the EPA, the Southern O'ahu Basal Aquifer (also known as the O'ahu Sole Source Aquifer and depicted in yellow in the image below) is the "principal source of drinking water" for the island, which "[i]f contaminated, would create a significant hazard to public health." 52 Fed. Reg. at 45497.



63. The Aquifer includes the basal aquifer beneath the Red Hill Facility and was designated a Sole Source Aquifer in 1987 under Section 1424(e) of the Safe Drinking Water Act (52 Fed. Reg. 45496). The Aquifer is characterized as unconfined, flank-type and has at all relevant times been used as a drinking water source. The Aquifer contains fresh water, with less than 250 milligrams per liter of chloride.

64. The Aquifer has a high vulnerability to contamination.

65. The “sole source” designation signifies that there are no alternative drinking water source(s) that could physically, legally, and economically supply all those who depend on the aquifer for fresh water.

66. The Aquifer is an irreplaceable source of fresh water.

67. The bottoms of the USTs are located only approximately 100 feet above the Aquifer.

E. Hydrogeology In and Around the Red Hill Facility

68. The hydrogeologic environment that underlies the Red Hill Facility is highly complex, sensitive, and uncertain.

69. The subsurface environment includes various geological formations that are intermixed and form complex pathways for fluids and vapors, including the Released Contaminants, to move through the subsurface and ultimately reach the Aquifer below the Red Hill Facility. For instance, the geologic rock formation

underlying the Red Hill Facility is comprised of a series of fractured rock layers formed from basaltic lava flows. The basaltic section consists of interbedded ‘a‘ā and pāhoehoe lava flows. These lava flows vary in thickness, orientation, and porosity. Because of the layered nature of the lavas, fluid flow generally prefers to follow the layers rather than moving vertically through the layers. Vertical ground water flow is typically achieved through secondary porosity features (rock fractures) and within dipping distinct clinker zones of varying thicknesses that can be interbedded and connected vertically down dip.

70. The BWS has analyzed the publicly available information on hydrogeology, groundwater flow, and contaminant fate and transport at and from the Red Hill Facility, the environment in the vicinity of the Facility, the Aquifer, and past and potential future fuel releases from the UST System. The BWS has reached the following determinations, each of which was communicated to the Navy:

- a. “The complex subsurface, characterized by a complicated network of high-speed pathways that can distribute the contaminants, does not prevent the fuel constituents from reaching the Sole Source Aquifer.”
- b. “These lavas, clinker zones, and lava tubes are found intermixed, forming complex pathways for fluids to move through the subsurface.”
- c. “Fractured, volcanic rocks have unique characteristics in that water and contaminants (liquid and vapor) travel in discrete

pathways that may be highly spatially variable, fragmented, and discontinuous, and directionally dependent.”

- d. “The fact that the released fuel is present in the environment and can reach the Sole Source Aquifer is apparent from an examination of rock cores removed from under the Tank Farm, evaluation of vapor sampling results, and analysis of groundwater trend data.”

(Evaluation of Hydrology, Groundwater Flow and Contaminant Fate and Transport, Red Hill Bulk Fuel Storage Facility, Golder Associates Inc., Dec. 29, 2020, at ii, 7, 9, 21).

72. The groundwater beneath and in the area of the Red Hill Facility is hydraulically connected to groundwater the BWS accesses through its Impacted Water Sources.

73. Synoptic studies performed by the United States Geological Survey in 2018, 2021, and 2022 have shown a hydraulic connection (indicating movement of groundwater and contaminants) between the Navy’s Red Hill Shaft and the BWS’s Hālawā Shaft during interval pumping.

74. Further, in July 2019, the DOH analyzed groundwater flow paths in the Moanalua, Red Hill Facility, and Hālawā regions and determined that groundwater flows northwest from the Red Hill Facility toward and into the BWS’s Hālawā Shaft.

The groundwater elevation contours beneath the Red Hill Ridge and beneath the Hālawā-‘Aiea area indicate that at least where the penetration of the saprolite into aquifer is either shallow or non-existent, **the relative**

groundwater elevations indicate groundwater flow to the northwest. More specifically, the groundwater contouring strongly suggests that the flow direction beneath the upper part of the facility is to the northwest. This observation is in direct contrast to the Navy's expectation that the water flows along the shortest mauka to makai path from the high elevation recharge areas to the coast.

(DOH, Hawai'i Department of Health Evaluation of Groundwater Flow Paths in the Moanalua, Red Hill and Hālawā Regions, Rev. 2, July 2019) (emphasis added).

The BWS's Impacted Water Sources are northwest of the Facility.

F. The Navy's and the BWS's Drinking Water Sources

75. The Navy's JBPHH water distribution system, which supplies water to over 93,000 military service members and families housed at JBPHH, draws water from the Aquifer.

76. The JBPHH water distribution system originally relied on three sources: Red Hill Shaft, 'Aiea-Hālawā Shaft, and Waiawa Shaft.

77. The Navy's Red Hill Shaft is located approximately 3,400 feet southwest and hydraulically downgradient from the Red Hill Facility mid-point. Prior to the Navy shutting it down, the Red Hill Shaft was the primary source of potable water that fed into the JBPHH water distribution system. It was constructed as a tunnel near the water table and is designed to collect freshwater from near the surface of the Aquifer.

78. Prior to being shut down, the Navy's 'Aiea-Hālawā Shaft served as an alternate water source for the JBPHH system. It is located 2.04 miles (10,778 feet) northwest and hydraulically downgradient from the Red Hill Facility mid-point.

79. The Navy's Waiawa Shaft is located 5.68 miles (29,990 feet) northwest from the Red Hill Facility mid-point. At this time, the Waiawa Shaft is the only active drinking water source for JBPHH, supplying all drinking water to the base since December 2021.

80. While the Navy and the BWS have separate distribution systems, they obtain their water from the same Aquifer. The BWS has five (5) drinking water sources in close proximity to the Red Hill Facility: (1) Hālawā Shaft; (2) Hālawā Wells; (3) 'Aiea Gulch Wells; (4) 'Aiea Wells; and (5) Moanalua Wells. (See below for map showing the BWS's water sources in close proximity to the Red Hill Facility, outlined in black)



81. The BWS's Hālawā Shaft was the largest single water source on O'ahu, supplying approximately 20% of the water to Metropolitan Honolulu—Moanalua Valley to Hawai'i Kai, including Waikīkī. On average, 10 to 12 million gallons per day were pumped into a water system serving about 450,000 people (residents and visitors). As stated herein, the Navy's tortious conduct and Contaminant Releases forced the BWS to shut down the Hālawā Shaft.

82. The BWS's Hālawā Shaft is located 0.94 miles (4,966 feet) northwest and hydraulically downgradient from the Red Hill Facility mid-point. It is also only 1.45 miles (7,670 feet) away from the Navy's 'Aiea-Hālawā Shaft water well.

83. The BWS's Hālawā Wells are located 1.64 miles (8,680 feet) miles northwest and hydraulically downgradient from the Red Hill Facility mid-point.

84. The BWS's 'Aiea Gulch Wells are located 1.61 miles (8,493 feet) northwest and hydraulically downgradient from the Red Hill Facility mid-point.

85. The BWS's 'Aiea Wells are located 1.98 miles (10,500 feet) northwest and hydraulically downgradient from the Red Hill Facility mid-point.

86. The BWS's Moanalua Wells are located 1.32 miles (7,000 feet) southwest and hydraulically downgradient of the Red Hill Facility mid-point.

G. Contaminant Releases from the Red Hill Facility to the Environment

87. There have been numerous episodic releases from the Red Hill Facility over the past 80 years.

88. Fuel releases have been a constant threat since the Red Hill Facility became operational in the 1940s and have continued to occur at least as recently as November 2021.

89. There have been at least 76 fuel release incidents at the Red Hill Facility potentially involving in excess of one million gallons of fuel.

90. According to the DOH, it is “[m]ore likely than not” that the Navy has “understate[d] the true number of releases [and] total volume of fuel actually released” from the Red Hill Facility.

91. According to news reports, during a March 2014 joint legislative committee hearing at the State Capitol, Hawai‘i’s then-Deputy Health Director Gary Gill stated that, “[i]n 1998, in a study presented to the Department of Health, (the Navy) estimated that cumulatively up until that point, as much as 1.2 million gallons of fuel from this facility may have leaked.”

92. In November 2023, the Red Hill Water Alliance Initiative, a coalition of State of Hawai‘i and City and County of Honolulu officials, reported that the volume of fuel released from the Red Hill Facility over its 80-year lifespan was significantly higher—roughly 1.94 million gallons.

93. Upon information and belief, the Navy also acknowledged in a release issued in summer 2024 that approximately “1.94 million gallons may have leaked from the facility during its history.”

94. Examples of releases between 1943 and 1998 from the UST System

for which the Navy has records (or partial records) include the following:

- a. In October of 1947, the Navy reports a “Tell-tale leak noted, unknown amount” at Tank 2, after which the UST was emptied;
- b. In July 1948, the Navy reported a leak at Tank 16, however, “no details” were provided (in May 1949, the Bechtel Corporation issued a report indicating that 1,100 barrels (or approximately 35,000 gallons) leaked from Tank 16 during this same time period);
- c. In July of 1949, Tank 16 released approximately 11,000 gallons over eleven (11) days, but the Navy has “no additional information”;
- d. In December of 1949, Tank 16 released approximately 18,000 gallons over four (4) days, but the Navy had “no information on when leakage was stopped”;
- e. Between April and May of 1958, “[a]pproximately 1500 gallons leaked from” Tank 9;
- f. Between August 1964 and September 1967, “[v]arious leaks” were detected at Tank 1, but the Navy had no information on the “quantity of leakage”;
- g. In June 1969, Tank 17 was leaking at a rate of approximately 1 gallon per 1.5 minutes;
- h. Between August 1970 and April 1972, Tank 1 experienced “[u]nexplained fuel drops amounting to 31,294 gallons”;
- i. Between May 1975 and August 1978, Tank 1 again experienced “[u]nexplained fuel drops,” this time “amounting to 32,765 gallons”;
- j. In January, July, September, and October of 1981, the Navy reported the discovery of “severe” and other leaks in Tanks, 10,

13, 15, and 16 following tank repair projects, but the Navy had “no details”; and

- k. In 1998, the Navy reported finding “holes in the steel liner during a tank maintenance project” for Tank 19.

(Naval Facilities Eng’g Command, Red Hill Bulk Fuel Storage Facility Final Groundwater Protection Plan at ES-3 at 3-2 through 3-5 (2008)). The Navy has therefore had actual notice that the Tank System persistently released Contaminants for decades, yet the Navy failed to take appropriate measures to investigate, identify, and stop the more recent Contaminant Releases.

95. The Navy’s 2008 Groundwater Protection Plan, which was developed to mitigate the potential impact of the Navy’s fuel releases from the Red Hill Facility to the groundwater system, noted that “other releases may have occurred that are not reflected in the histories above. However, the accuracies of these tests are not known and in some cases leakage through gate valves has been determined as the cause of unexplained changes in fuel levels.”

96. In 2010, the Navy issued an audit report summarizing its findings and recommendations regarding the Red Hill Facility and the Navy’s ability to manage it within applicable environmental standards. Among other things, the Navy found (all emphases added):

- a. “[T]he Navy cannot detect slow, chronic fuel releases from the [Red Hill Facility] tanks because current methods are not effective for that purpose.”

- b. **“Groundwater contamination exists around the underground storage tanks (USTs) at [the Red Hill Facility] because of irregular maintenance and insufficient inspection over the life of the fuel tanks.”**
- c. **“Additionally, the Navy cannot provide assurance that slow, chronic fuel releases can be detected and mitigated in a timely manner and that recent increases in contaminant levels have not impacted other water sources in the [Red Hill Facility] area.”**
- d. “[P]revious site investigations have shown evidence of past fuel releases that have resulted in contamination of the rock bed, soil, and groundwater surrounding the [Red Hill Facility] tanks.”
- e. “This testing is conducted at four monitoring wells (three beneath the [Red Hill] facility; one at the Navy Well) (see Exhibit E). The testing results at all four monitoring wells indicate that the **groundwater has been contaminated by various chemical constituents, such as total petroleum hydrocarbons (TPH) and naphthalene**, which are found in petroleum based fuels.”
- f. “Tank 6 was inspected in 1998, and five flaws requiring repair were found. However, 8 years later, another inspection was performed on Tank 6 using the modified-API 653 method. This inspection method included scanning 100 percent of the tank barrel and extension and resulted in 476 flaws requiring repair before the tank could be returned to service (tanks are temporarily taken out of service during inspection and repair).”

(Aug. 16, 2010 Naval Audit Service, Audit Report at 9, 11, 14).

97. In 2014, the Navy stated that “[p]revious environmental Site Investigations (SIs) at the [Red Hill] Facility showed that past inadvertent releases have contaminated the fractured basalt, basal groundwater, and soil vapor beneath the Facility with petroleum hydrocarbons.” (Naval Facilities Eng’g Command,

Interim Update Red Hill Bulk Fuel Storage Facility Final Groundwater Protection Plan at ES-1 (2014)).

98. The Navy thus acknowledges that it has caused, allowed, or experienced additional releases of Contaminants beyond what it has disclosed. The BWS believes and therefore avers that the released volumes of Contaminants substantially exceed what the Navy has reported.

i. January 2014 Release Incident

99. In January 2014, the Navy reported a release into the environment of approximately 27,000 gallons of JP-8 jet fuel from Tank 5 (“**2014 Release Incident**”) during filling of Tank 5.

100. Alarms were triggered during the filling, but operators presumed the alarms were falsely activated and did not immediately react.

101. Although the release occurred between December 12, 2013 and January 6, 2014, the Navy did not orally report the release to the DOH until January 13, 2014.

102. The Navy waited until January 23, 2014 to provide written notification to the DOH of this substantial fuel release.

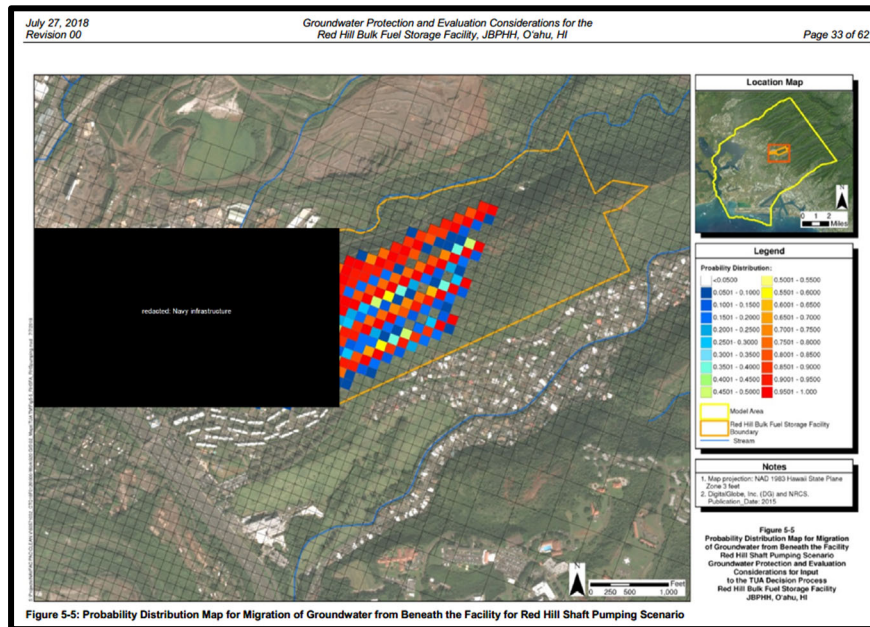
103. The fuel release from Tank 5 caused the BWS to incur costs and take responsive actions to address the potential impacts to its drinking water resources. The BWS had to stop pumping at certain of its well stations for several days,

implement new, rigorous water quality testing protocols, and install a groundwater monitoring well intended to assist in the detection of potential petroleum contamination from the Red Hill Facility.

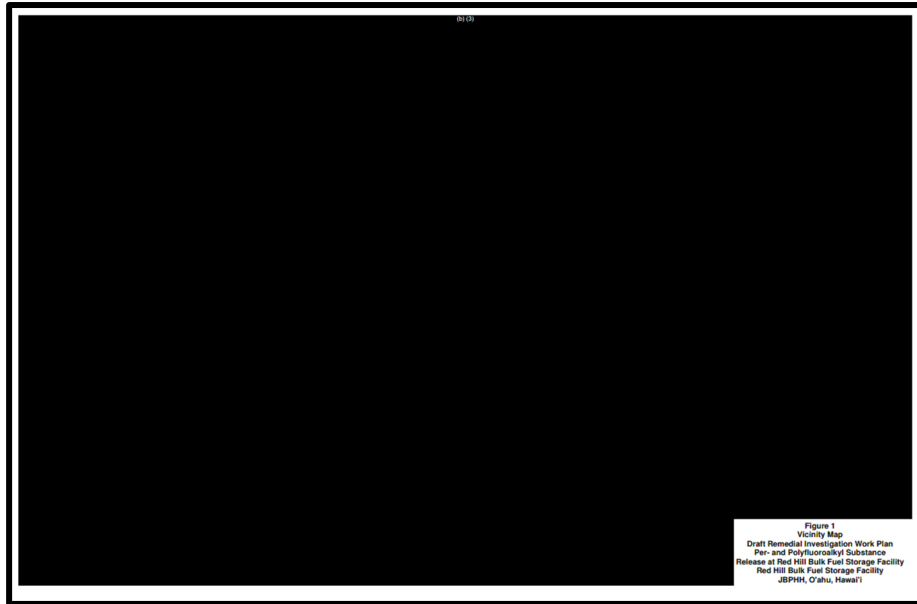
104. On February 25, 2014, the BWS wrote a letter to the Navy regarding concerns about “the numerous past fuel releases” from the Red Hill Facility and “its impact on an irreplaceable groundwater aquifer that we all depend on for our potable water supply.” The BWS explained that the Aquifer that supplies the Navy’s Red Hill Shaft also supplies the BWS’s Moanalua Wells station to the south. The BWS Hālawā Shaft pumping station is also located less than a mile northwest of the Red Hill Facility. The BWS further explained that “[i]n the event our Hālawā Shaft and Moanalua Well stations are affected by the contamination under [the Red Hill Facility], costly treatment will be required that can be avoided today by remediating the petroleum contamination already there and installing additional groundwater monitoring wells to track any contamination that migrates from the site towards other wells in the area.” The Navy did not remediate the petroleum contamination or install a sufficient number of groundwater wells to track contamination.

105. In the following months, the BWS submitted formal requests for information to the Navy seeking documentation regarding, among other things, Red Hill Facility tank material, construction, historical fuel releases, including

volume released, and information concerning groundwater flow beneath and around the Red Hill Facility. The Navy failed to provide requested documentation and heavily redacted what was made publicly available on the regulatory agencies' websites. Below are just a couple examples of documents the Navy unnecessarily unredacted:



(July 27, 2018, Groundwater Protection and Evaluation Considerations for the Red Hill Bulk Fuel Storage Facility, Figure 5-5).



(June 2024, Draft Remedial Investigation Work Plan Per- and Polyfluoroalkyl Substances Release Red Hill Fuel Bulk Storage Facility, Figure 1).

106. According to news reports, Gary Gill, then-Deputy Director for Environmental Health at the DOH, explained that the 2014 Release Incident provided an opportunity “to get a good handle on what’s happened in the past, and make sure nothing like this happens again.” The Navy failed to do so.

ii. 2015 Administrative Order on Consent

107. In response to the 2014 Release Incident, the Navy, the DLA, the EPA, and the DOH entered into the AOC and Statement of Work (“SOW”) on September 28, 2015, that required the Navy and DLA to implement various measures to respond to that Incident, prior releases and potential future releases “to protect drinking water, natural resources, human health, and the environment.” (“2015 AOC,” ¶ 1(a)). “The primary objectives of this AOC are to take steps to

ensure that the groundwater resource in the vicinity of the Facility is protected and to ensure that the Facility is operated and maintained in an environmentally protective manner.” (*Id.*, ¶ 1(b)). The parties thereto acknowledged that the 2015 AOC was “protective of human health and the environment, and is in the public interest.” (*Id.*, ¶ 1(d)).

108. The DOH considered the “actions Navy and DLA have agreed to perform in accordance with this AOC [to be] necessary to address potential impacts to human health, safety and the environment, as envisioned by HRS §§ 340E-4, 342D-9, 342D-10, 342D-11, 342L-8, 342L-9 and 342L-52, due to historical, recent and potential future releases at the Facility.” (2015 AOC, ¶ 5(a)(x)).

109. The SOW for the 2015 AOC stated that the “primary objectives of the AOC and this SOW are to take steps to ensure that the groundwater resource in the vicinity of the Facility is protected and to ensure that the Facility is operated and maintained in an environmentally protective manner.” (SOW, p.1).

110. The 2015 AOC expressly recognized that the BWS’s Hālawa Shaft and Moanalua Well are “part of a public water system...near the Facility.” (2015 AOC, ¶ 4(m), (n)).

111. As stated in the SOW, the parties to the AOC and SOW intended “to seek the technical advice of subject matter experts, *such as the Honolulu Board of*

Water Supply and the Hawai‘i Department of Land and Natural Resources, as needed, for *scoping and review of key deliverables*. The Parties shall take actions that facilitate sharing of information with subject matter experts....” (SOW, p.2, § 1.1) (emphases added). The Navy failed and refused to adequately facilitate sharing of information with the BWS.

112. Among other actions, the SOW required the Navy and the DLA to “refine the existing groundwater flow model and improve the understanding of the direction and rate of groundwater flow within the aquifers around the Facility” within 24 months from “the approval of the Groundwater Flow Model Report Scope of Work.” (2015 SOW, ¶¶ 7.1, 7.1.3). The Navy failed to adequately comply with this requirement, and has yet to provide a refined, reliable groundwater flow model.

113. The SOW required the Navy and the DLA to “submit a Contaminant Fate and Transport Model Report to the Regulatory Agencies for approval” within 180 days from their approval of the Groundwater Flow Model Report. (2015 SOW, ¶ 7.2.3). The Navy failed to adequately comply with this critical requirement.

114. The SOW required the Navy and the DLA to submit a Groundwater Monitoring Well Network Report with recommendations for the number and location of monitoring wells, including new monitoring wells. (2015 SOW,

¶¶ 7.3.3-7.3.5). The Navy and the DLA failed to identify and install the number of monitoring wells necessary in sufficient locations to determine the extent of contamination or the fate and transport of the Released Contaminants.

115. The Navy and DLA have failed to, among other things, develop either a reliable, predictive groundwater flow model or a contaminant fate and transport model. The BWS received certain information relating to the two models, but the Navy and the DLA failed to provide the underlying data files and redacted information necessary for the BWS to fully evaluate the reliability or accuracy of the models. Based on the BWS's review of the redacted model reports and publicly available supporting information, they are grossly flawed, contrary to known data, and unreliable. As a result, the BWS had to continue its protective measures to prevent the Contaminant Releases from entering the BWS's Impacted Water Sources.

116. Pursuant to the AOC, the Navy proceeded to drain Tank 5 and collected samples from existing monitoring wells. Results around Tank 5 confirmed a spike in levels of hydrocarbons in soil vapor and groundwater, further demonstrating that one or more Contaminant Releases had occurred.

117. As part of the AOC, the Navy and the DLA agreed to submit a Risk and Vulnerability Assessment Report to the EPA and the DOH for approval. (2015 SOW, ¶ 8.3). The Navy's Assessment Report established that the Navy

could not prevent contaminant releases from the Red Hill Facility into the environment, concluding the following:

- a. There was a greater than 27% probability of an acute sudden release of between 1,000 and 30,000 gallons of fuel from the Red Hill Facility each year, with an expected annual release of 1,960 gallons.
- b. There was a greater than 34% probability of a sudden release of more than 120,000 gallons of fuel from the Red Hill Facility within the next 100 years.
- c. The expected volume of chronic, undetected fuel releases from the Red Hill Facility was 5,803 gallons per year.

(Quantitative Risk and Vulnerability Assessment Phase 1 (Internal Events without Fire and Flooding) Red Hill Bulk Fuel Storage Facility Report, Nov. 12, 2018, at ES-3 – ES-5).

iii. The Navy's Application to Operate the Red Hill Facility

118. Effective July 15, 2018, the DOH adopted Hawai'i Administrative Rules (“**HAR**”) Chapter 11-280.1, requiring USTs and UST Systems like those at the Red Hill Facility to be subject to permitting requirements by July 15, 2019. HAR §§ 280.1-10(a)(1)(A), 280.1-323(a).

119. By letter received by the DOH on May 23, 2019, as corrected June 12, 2019, the Navy submitted an application seeking a five-year permit to operate the Red Hill Facility, including its UST System. Because of the concerns about contamination of O'ahu's sole source Aquifer, including the Navy's ongoing fuel

releases at the Red Hill Facility, the BWS, as well as the Sierra Club of Hawai‘i, notified the DOH that they were objecting to the Navy’s permit application and requested a contested case hearing.

120. At a hearing that took place from February 1, 2021 to February 8, 2021, witnesses for the Navy, the BWS, and the Sierra Club presented sworn testimony and exhibits entered into the record. Following the February 2021 hearing, another significant Contaminant Release occurred at the Red Hill Facility in May 2021. As a result, the proceeding remained open to allow for additional information and testimony related to that release.

iv. May 6, 2021 Release Incident

121. Despite purported actions taken by the Navy as part of its efforts to comply with the 2015 AOC, on May 6, 2021, fuel was released from the Red Hill Facility during the refueling of Tank 20 (“**May 2021 Release Incident**”).

122. Red Hill Facility operators failed to follow proper valve opening and closing sequences during the refilling of Tank 20, resulting in two piping joint ruptures and subsequent release of JP-5 fuel inside the Red Hill Facility’s lower access tunnel in the vicinity of Tanks 18 and 20.

123. On May 7, 2021, the Navy issued a press release stating “approximately 1,000 gallons of fuel was released during a fuel transfer and properly collected by the fuel containment system.” According to Navy Captain

James “Gordie” Meyer, “Our containment system functioned as designed to keep the fuel contained within our facility, **with no indication that fuel was released to the environment.**” (emphasis added). As explained below, the Navy was seriously wrong.

124. On or about October 14, 2021, the Navy issued a public report containing findings of its investigation into the May 2021 Release Incident.

125. In its October 2021 Investigation Report, the Navy revised its estimate of released jet fuel from 1,000 to 1,618 gallons.

126. Despite assuring the DOH and the public that fuel lost during the May 2021 Release Incident did not reach the environment, the Navy now admitted that it only recovered 1,580 of the 1,618 gallons of released fuel, with the balance released into the environment.

127. On October 26, 2021, the Navy issued a formal press release advising that its investigation determined that “operator error” caused the May 2021 Release Incident, and reiterated that 1,618 gallons of jet fuel (JP-5) was released from a pipeline inside the Red Hill Facility and that all but 38 gallons was recovered.

128. On October 28, 2021, Navy Captain James Meyer assured members of the State of Hawai‘i Fuel Tank Advisory Committee that the Navy could safely operate the Red Hill Facility going forward.

129. Although known at the time, the Navy failed to address the fact that an inventory ledger from the May 2021 Release Incident “indicated a fuel loss of approximately 20,000 gallons,” because the Navy “did not deem it relevant.”

v. **November 20, 2021 Release Incident**

130. On November 20, 2021, another Contaminant Release occurred from the Red Hill Facility (“**November 2021 Release Incident**”). A Red Hill Facility employee operating a 3.5-ton train cart negligently struck the valve of a fire suppression PVC discharge pipe, cracking the valve and spilling approximately 19,000 gallons of JP-5 fuel trapped in the discharge pipe since the May 2021 Release Incident. The released jet fuel traveled along a concrete floor tunnel and collected in a groundwater sump and a sanitary sewer tank. A photo of the release is below.



(Photo located at: <https://www.civilbeat.org/2022/07/watch-fuel-spewed-full-blast-into-red-hill-tunnel-in-november/>; taken by “rover who hit the Red Hill pipeline valve with a cart”; see video of release at: <https://youtu.be/GEgohRIrSA>).

131. The fire suppression discharge pipe was designed to transport AFFF following activation for fire suppression from the area of the lower access tunnel under the USTs to the AFFF retention tank.

132. Although the material specification for the fire suppression discharge pipe mandated use of steel pipe, the Navy constructed the pipe with a combination of PVC and steel as a cost saving measure.

133. AFFF is used to extinguish highly flammable or combustible fires, such as fires involving gas tankers and refineries.

134. AFFF contains PFAS—hazardous substances commonly referred to as “forever chemicals.”

135. PFAS leaches from soil to groundwater and is highly mobile and water soluble, making groundwater and surface water particularly vulnerable to contamination. A major source of human exposure to PFAS is through ingestion of contaminated drinking water.

136. On November 21, 2021, the Navy issued a press release concerning the November 2021 Release Incident, claiming that only “14,000 gallons of a mix of water and fuel” was released from a drain line for the fire suppression system,

that the water/fuel mixture “was contained in the lower tunnel” at the Red Hill Facility, and that “[t]here are no signs or indication of any releases to the environment, and the drinking water remains safe to drink.”

137. On November 22, 2021, the Navy issued another press release, once again claiming that “14,000 gallons of water and fuel mixture” was contained and that there were “no signs or indication of any releases to the environment and the drinking water remains safe.”

138. On November 28, 2021, the Navy advised the public that it was investigating “reports of a chemical smell in drinking water at several homes in some of the military housing areas” around the Red Hill Facility.

139. That same day, without alerting the BWS, the Navy ceased operation of its Red Hill Shaft drinking water source and implemented an emergency response to address the ongoing drinking water contamination. The Navy did not provide any information to the BWS concerning the reasons for that action, the health risk to the sole-source Aquifer, or protective measures that the BWS should take.

140. On November 29, 2021, Navy Captain Erik Spitzer, the commander of JBPHH, sent a message to all military housing residents “that there are no immediate indications that the water is not safe,” adding that “[m]y staff and I are drinking the water on base this morning, and many of my team live in housing and

drink and use the water as well.” (<https://www.today.com/news/Hawaii-drinking-water-petroleum-water-found-t241906>).

141. In contrast, on November 29, 2021, the DOH issued a press release advising “all Navy water system users [to] avoid using the water for drinking, cooking or oral hygiene.” The DOH further advised “Navy water system users who detect a fuel odor from their water [to] avoid using the water for drinking, cooking, bathing, dishwashing, laundry or oral hygiene (brushing teeth, etc.).”

142. The DOH repeated those warnings in press releases over subsequent days. (Dec. 8, 2021, DOH Press Release entitled “Petroleum Contamination Reported in Navy’s ‘Aiea Hālawa Shaft”; Dec. 10, 2021, DOH Press Release entitled “Hawai‘i Department of Health Confirms High Levels of Petroleum Contamination in Navy’s Red Hill Shaft”).

143. On November 30, 2021, the Navy informed the BWS for the first time that the Red Hill Shaft had been shut off two days earlier.

144. Because the BWS has a public trust responsibility to protect the water resources that it manages, and in the interest of protecting the public’s health and safety, the BWS immediately reduced the pumping capacity of its own Hālawa Shaft by 50% due to the Navy-released Contaminants present in the Aquifer from which the BWS pumped groundwater.

145. On December 2, 2021, the Navy observed a “fuel smell and a sheen on top of the water in the Red Hill well.” A sample was then taken from the Red Hill well and analyzed, with preliminary results confirming that the fuel in the water “was consistent with the carbon signature of JP-5.”

146. On December 2, 2021, the BWS shut down its nearby Hālawā Shaft in an effort to prevent or limit migration of the contaminated groundwater from the Red Hill Facility toward and into the Shaft. The Navy’s releases were a substantial factor, and in fact, caused the BWS to shut down the Hālawā Shaft.

147. The Navy would later admit that, by shutting down the Red Hill Shaft, other potable water sources—including the BWS’s Hālawā Shaft—could draw in contaminated groundwater. During a hearing in December 2021, Navy witness Sherri Eng confirmed that if the BWS had not shut off its Hālawā Shaft, the contaminated groundwater would have traveled “west” in the direction of the Hālawā Shaft.

148. The next day, on December 3, 2021, the Navy shut off its nearby ‘Aiea-Hālawā Shaft to prevent further contamination from the November 2021 Release Incident.

149. On December 5, 2021, the DOH sampled the Navy’s Red Hill Shaft. The water sampling results indicated that the amount of diesel (total petroleum hydrocarbons, or TPH-d) was as high as 140,000 micrograms per liter ($\mu\text{g/l}$), 350

times the DOH's environmental action level ("EAL") then in effect for drinking water toxicity. The TPH-g levels (other fuel) were reported as high as 20,000 µg/l, which is more than 65 times higher than the DOH's EAL of 300 µg/l that was in effect at that time.

150. Faced with the reality of the widespread contamination caused by the Navy, on December 5, 2021, Navy Captain Erik Spitzer issued a public apology for misleading the servicemembers and families living on the base, stating that his words were "not the compassionate and validating words I wish were used, and I regret I did not tell our families not to drink the water."

<https://www.facebook.com/JBPHH/posts/268832461948727>).

151. The Navy's consistent failure to properly characterize and disclose the release and its public health risk reinforced the BWS's need to take its own protective measures in response to the Navy's Released Contaminants, especially given the Navy's history of Contaminant Releases, failure to disclose the scope and extent of the Released Contaminants, failure to comply with the 2015 AOC, and refusal to provide basic groundwater flow and fate and transport data to the BWS. Relatedly, an internal Navy investigation recognized that Navy Captain Erik Spitzer's message to residents was one of four "key friction points" that negatively impacted the public's trust in the Navy. (2022 Command Investigation at 82) ("This immediate turn around in messaging, along with the report three days later

that the Red Hill well was secured prior to the CO's message to families, combined to hurt public trust"). Just as the public lost trust in the Navy based on the Navy's actions, so too did the BWS.

152. On December 6, 2021, the DOH issued an Emergency Order (**"December 2021 Emergency Order"**) requiring the Navy to immediately suspend fuel storage operations at the Red Hill Facility, expeditiously install a drinking water treatment system at the Navy's Red Hill Shaft, and promptly take action to defuel the Red Hill UST System.

153. According to the December 2021 Emergency Order, "[o]n or about November 28, 2021, the [Navy] began receiving complaints from water users from the [Navy's] water system regarding a gas or fuel odor from their drinking water. On or about December 2, 2021, the [Navy] identified the source of fuel contamination to be the Red Hill Shaft, one of the drinking water sources that services the [Navy's] water system. As of December 3, 2021, the [DOH] received nearly 500 complaints, mostly from residents or customers serviced by the [Navy's] water system complaining of fuel or chemical smell from their drinking water. There are no on-site remedies available to treat the water prior to distribution." (December 2021 Emergency Order at 2).

154. In further support of the December 2021 Emergency Order, the DOH made the following additional findings, highlighting the unreliable nature of not

only the Navy's public disclosures regarding the Contaminant Releases, but also the Navy's investigations and putative corrective actions (all emphases added):

- a. The Navy "has *consistently been unable* to submit [2015] AOC deliverables to the satisfaction of the [DOH]."
- b. "The 2021 incidences *directly refute* the [Navy's] claims in the Tank Upgrade Alternatives Decision Document that the Red Hill 'system of systems' is protective of groundwater. The [Navy's] tank upgrade proposal recommends continuing current design and operation. The Regulatory Agencies disapproved the [Navy's] submission in 2020 and the [Navy's] resubmission is *significantly flawed and fails to adequately address key regulatory concerns.*"
- c. "*The [Navy's] Groundwater Flow Model outputs do not match important field conditions, and therefore are unreliable for decision-making.*"
- d. "*Beginning no later than 2018, the Regulatory Agencies have repeatedly and consistently provided, and [the Navy] has consistently rejected, significant technical corrective comment on the [Navy's] Conceptual Site Model, the purpose of which is to describe the hydrogeologic site conditions, and [the Navy's] preliminary Groundwater Flow Models, the purpose of which is to determine groundwater movement as may be related to contaminant transport. The deficiencies in both models have not been adequately addressed.*"
- e. "The Investigation and Remediation of Releases report is based on the [Navy's] groundwater flow model and therefore *cannot be accepted* as an appropriate long-term remedy for all types of future releases. Thus, *significant progress to mitigate the risk of future releases has not been made.*"
- f. "In addition, *water quality data show significant increases in total petroleum hydrocarbon as oil detections at Red Hill Shaft and relative increases around the Bulk Fuel Storage Tanks.* While the May 6 incident is a possible cause of the increase, the

size of the impact area shown in the well data *does not appear to correlate with the [Navy's] description of the incident* (release of 38 gallons to the environment—far less than would be expected given the increased concentrations observed in the well field since the May 6 event). *This type of uncertainty diminishes timely and accurate identification of risk and associated response measures.”*

- g. “Given the number of incidences that have occurred at the Facility within the last year, and in view of the current drinking water contamination, *the [Navy] has not demonstrated that immediate and appropriate response actions are available*, and therefore cannot ensure that immediate and appropriate response actions will be available should another release occurs in the future. *The risk of any additional contaminants in the aquifer or lack of immediate action now may exacerbate the current situation and further jeopardize our aquifer system.”*

(December 2021 Emergency Order at 3-4).

155. On December 7, 2021, Carlos Del Toro, Secretary of the Navy, issued a formal Memorandum for the Chief of Naval Operations suspending operations at the Red Hill Facility (“**December 2021 Directive**”). The December 2021

Directive stated:

The recent incident at Joint Base Pearl Harbor-Hickam, in which military housing units and other facilities received tap water containing petroleum products is not acceptable. . . . Therefore, I am directing, under your leadership, the following actions:

1. The cessation of all operations at the Red Hill Underground Storage Tanks until the investigation into the cause of the incident is complete;
2. *The continuing isolation of the Red Hill and Halawa wells which we operate*, until the water distribution main and all affected homes and buildings have been flushed and can be supplied with potable water that meets EPA drinking water standards;

3. Evaluate acquisition of a drinking water treatment system or systems at the Red Hill Shaft to ensure the distribution of drinking water conforms to standards prescribed by the Safe Drinking Water Act and applicable regulations and to minimize the movement of any contaminant plume;

4. Within 30 calendar days, the Navy will consult with a qualified independent third party to assess operations and system integrity of the Red Hill Underground Storage Tank Facility to determine design and operational deficiencies that may impact the environment and to develop a work plan and implementation schedule to conduct necessary repairs and make necessary changes in operations to address any deficiencies identified in the assessment. Corrective actions shall be performed as expeditiously as possible; and

5. Following the independent third party assessment, the Navy will approve a final work plan and implementation schedule and will expeditiously perform work and make necessary changes in operations.

(<https://www.secnave.navy.mil/smallbusiness/Redhill/SEVNAV%20Memo.PDF>)

(emphasis added).

156. On December 7, 2021, despite its historic inability to safely operate the Red Hill Facility, and its poisoning of the Aquifer, the Navy notified the DOH that it was contesting the December 2021 Emergency Order. On December 13 and 14, 2021, the Sierra Club and the BWS, respectively, intervened in the contested case because of the undeniable health and environmental risks created by the Navy's contamination, including to the BWS's own water resources.

157. On December 8, 2021, the BWS learned for the first time of contamination of the Navy's 'Aiea-Hālawā Shaft. The amount of diesel (total petroleum hydrocarbons, or TPH-d) in samples from the Navy's water distribution

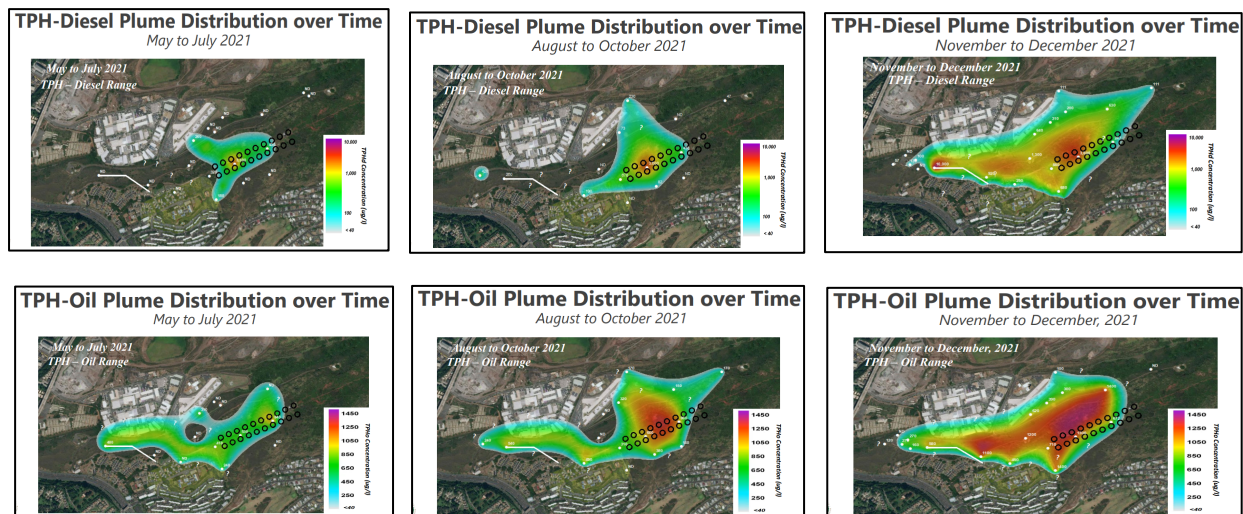
system at its ‘Aiea-Hālawā Shaft were more than double the state-approved levels for drinking water at that time.

158. That same day, the BWS shut down its nearby ‘Aiea Wells (Units 1 and 2) and Hālawā Wells (Units 1, 2, and 3) in response. Given the hydrogeologic connectivity of the Aquifer, the BWS discontinued use of the wells both because of the contamination risk but also to prevent the wells from serving as migration devices to draw and/or capture the Navy’s Released Contaminants toward and into the BWS’s Impacted Water Sources. The Navy’s releases caused the shutdown of the BWS’s ‘Aiea and Hālawā Wells.

159. The BWS was forced to shut down its Impacted Water Sources, based on the location of the Impacted Water Sources in relation to Red Hill and the Navy’s Impacted Water Sources, the known presence of harmful Released Contaminants proximate to the BWS’s Impacted Water Sources, the known ability of contaminants to move through the Aquifer in the direction of the BWS’s Impacted Water Sources, and the fact that the Navy had shut down its own Impacted Water Sources, thereby impacting the flow of groundwater. The BWS’s decision was made even more imperative given, among other things: (a) the Navy’s inability to safely operate the Red Hill Facility; (b) the Navy’s long history of Contaminant Releases from the Facility into the environment; (c) the Navy’s failure to remediate past Contaminant Releases; and (d) the Navy’s failure to

adequately advise and share information with the BWS (as well as the public as whole) regarding the cause, scope, and extent of the Contaminant Releases from the Facility.

160. In 2022, the DOH captured in plume maps the significant, widespread contamination caused by the November 2021 Release Incident. As seen below, extensive plumes of TPH-contaminated groundwater spread outward from the Red Hill Facility from May to December 2021 (red color indicating higher concentrations of TPH detected).



161. On December 27, 2021, the Hearing Officer issued a 32-page decision upholding the December 2021 Emergency Order in its entirety. The Hearing Officer described the Red Hill Facility as a “metaphorical ticking timebomb.” (12/27/2021 Decision).

162. The Hearing Officer further found:

- a. “A release that has already occurred that has damaged human health or the environment and that is not resolved to DOH’s satisfaction constitutes ‘an imminent peril to human health and safety or the environment.’” (12/27/2021 Decision, COL 18).
- b. “Historical releases have adversely impacted the environment as is evidenced by detection of fuel and fuel constituents in the Navy’s drinking water supply, the groundwater under the Red Hill Facility, and the soil vapor monitoring probes in the rocks beneath the facility.” (FOF 30).
- c. “The Red Hill Facility, as currently configured and operated, constitutes an imminent peril to human health and safety or the environment.” (COL 35).
- d. The November 2021 Release Incident was a “humanitarian and environmental emergency and disaster.” (FOF 39).
- e. “[T]he Navy does not yet know the full extent of the health effects of the contamination. People whose homes received contaminated water from the Navy’s water system had suffered stomach aches, vomiting, nausea, diarrhea, skin rashes, sore throats, burning eyes, headaches, and difficulty breathing, including illnesses requiring emergency medical attention. People are still suffering mental and emotional effects from their experiences.” (FOF 43).
- f. “The water is not yet clean,” “[t]he environment has not yet been remediated,” “[t]he humanitarian response is ongoing,” “[t]he environmental response is ongoing,” “[t]he Navy does not know exactly how the environment has been damaged or the full extent of the damage,” and “[t]he Navy does not know the exact long-term consequences of the November 2021 Release to humans or to the environment.” (FOF 50-53, 56-57) (emphasis added).
- g. “Continued operation of the Red Hill Facility, as it is currently configured and operated, poses an imminent threat to human health and safety or the environment.” (FOF 59).

- h. *“The Navy is not reliable with respect to monitoring whether leaks are occurring, determining how much fuel is released into the environment when leaks occur, and ascertaining threats.”* (FOF 68) (emphasis added).
- i. “There are pathways for fuel to travel from the Red Hill Facility to the environment at large.” (FOF 77).
- j. *“Fuel released from the Red Hill Facility presents a risk to the groundwater underlying the Red Hill Facility and the sole source aquifer generally.”* (FOF 78) (emphasis added).
- k. *“That the November 2021 Release and the aftermath constitute an imminent peril to human health and safety or the environment is a fact established by the preponderance of the evidence.”* (FOF 104) (emphasis added).

163. On January 3, 2022, the DOH affirmed the Hearing Officer’s decision and adopted the requirements of the December 2021 Emergency Order (“**January 2022 Final Order**”).

164. On February 2, 2022, the Navy filed challenges in Federal District Court and Hawai‘i Circuit Court to the January 2022 Final Order.

165. On March 7, 2022, Secretary of Defense Lloyd J. Austin III issued a memorandum directing “the Secretary of the Navy, in coordination with the Commander of the United States Indo-Pacific Command, to take all steps necessary to defuel and permanently close the Red Hill Bulk Fuel Storage Facility.”

166. On April 4, 2022, the United States of America entered into a stipulation with the DOH, the BWS, and the Sierra Club in federal court (1:22-cv-00051 DKW-RT) in which the United States committed to “defuel and permanently close the twenty Underground Storage Tanks at the Red Hill Bulk Fuel Storage Facility ... and the pipelines that are ordinarily used to transport fuel between these tanks and the underground pumphouse.”

167. On April 20, 2022, the Navy notified the DOH that it would be withdrawing its UST System permit application for the Red Hill Facility because it intended to “defuel and close the 20 underground storage tanks at Red Hill, the pipelines ordinarily used to transport fuel between the tanks and the underground pumphouse, and the four surge tanks and their appurtenant piping.”

168. In April 2022, the Navy withdrew its challenges to the December 2021 Emergency Order and January 2022 Final Order.

169. On May 6, 2022, both the December 2021 Emergency Order and January 2022 Final Order were withdrawn pursuant to HAR § 11-1-21(c) and replaced with a May 2022 Final Emergency Order.

170. The May 2022 Final Emergency Order required the Navy to provide a plan and schedule for the defueling and permanent closure of the Red Hill Facility.

171. The May 2022 Final Emergency Order, among other things, used the findings of fact and conclusions of law issued by the Hearing Officer on December 27, 2021 to find that:

- a. “*The Red Hill Facility*, as configured and operated by [the Navy], poses an *imminent and ongoing peril to human health and safety and the environment*. The 20 underground bulk fuel storage tanks (“20 Tanks”) at the Red Hill Facility must be safely and expeditiously defueled and the 20 Tanks and their associated four surge tanks and piping system(s) closed in accordance with chapter 11-280.1, HAR. To address the imminent and ongoing peril to human health and safety and the environment presented by the Red Hill Facility, the defueling of the Facility must be completed at the earliest date consistent with safe defueling.” (May 2022 Emergency Order at 2) (emphasis added).
- b. “[The Navy] acknowledges the need to safely defuel and permanently close the 20 Tanks, 4 surge tanks, and associated piping system(s).” (*Id.* at 4).

172. On June 2, 2023, the Navy, the DLA, and the EPA executed an administrative consent order requiring the defueling and closure of the Red Hill Facility.

173. On March 29, 2024, the Navy reported that it had completed defueling of all fuel within the UST System at Red Hill Facility capable of being removed by gravity. An estimated 64,000 gallons of non-flowable fuel still remained in tank bottoms along with sludge and will require a facility modification such as pipe removal to access.

174. The Navy claims all USTs at the Red Hill Facility will be cleaned and pipelines removed—thereby allowing for removal of non-flowable residual fuel—by September 30, 2027 in connection with the Red Hill Facility closure process.

H. The Navy Has Admitted Liability for the Releases.

175. Officers at the highest level of the Navy have admitted (at a minimum) that the Navy is responsible for the May and November 2021 Release Incidents and ensuing drinking water contamination crisis.

176. On June 13, 2022, then Vice Chief of Naval Operations Admiral William Lescher finalized a command investigation into the May and November 2021 Release Incidents (“**2022 Command Investigation Report**”).

177. The 2022 Command Investigation Report concluded that “[t]he contamination of drinking water from the Red Hill Shaft was the result of the Navy’s ineffective immediate responses to the 6 May and 20 November 2021 fuel releases at the Red Hill [Facility], and failure to resolve with urgency deficiencies in system design and construction, system knowledge, and incident response training.”

178. The Command Investigation Report, which attached the Navy’s 1/14/2022 Command Investigation Report prepared by Rear Admiral Christopher J. Cavanaugh, then identified a number of negligent human errors in its Findings of

Fact and Opinions that caused the Release Incidents, including, but not limited to (all emphases added):

- a. “On 6 May 2021, *Red Hill operators improperly executed a fuel transfer procedure*, resulting in two piping joint ruptures and a subsequent JP-5 fuel spill. Although unknown at the time, a fire suppression system sump pump transferred most of the fuel into a retention line, where it remained until 20 November 2021.” (FOF 41, Cavanaugh Report).
- b. “*While not recognized at the time of the incident or during post-incident assessments*, the fire suppression system Sump 1 pumps ran on 6 May 2021 and transferred up to 19,377 gallons of JP5 fuel into the fire suppression system retention line.” (Supplemental FOF 18, Command Investigation Report).
- c. “On 20 November 2021, as established in the Cavanaugh Report, a *Red Hill watch stander inadvertently struck a low point drain valve in the AFFF retention line with the passenger cart of a train, cracking the PVC pipe and spilling up to **19,377 gallons of fuel*** deposited there on 6 May. Up to 5,542 gallons of fuel remain unrecovered, *with some portion of that fuel contaminating the Red Hill well and the Navy drinking water distribution system.*” (Supplemental FOF at 25).
- d. “*The proximate cause of the fuel spill on 6 May 2021 was human error*. The CRO and pump operator took *intentional shortcuts* when transitioning between procedures. *Their improper valve operations* resulted in drawing a vacuum in the JP-5 line, then rapidly pressurizing it. This pressure surge caused mechanical failure of two piping joints. This opinion is consistent with a root cause analysis conducted by Austin Brockenbrough and Associates, LLC, a private engineering and consulting firm.” (Opinion 1, Cavanaugh Report).
- e. “The FLC Pearl Harbor Fuels Department *does not have adequate defense in depth against human error.*” (Opinion 2).

- f. “The decrease in tank inventory of nearly 20,000 gallons of fuel coincident with the 6 May 2021 spill *should have prompted a more critical and thorough investigation* by FLC Pearl Harbor supervisors.” (Opinion 7).
- g. “The FLC Pearl Harbor CO during and after the 6 May 2021 fuel spill *failed to act in order to understand the causes or effects of the spill, or to validate that Fuels Department was safe to continue operations.*” (Opinion 13).
- h. “The FLC Pearl Harbor Deputy Fuels Director *failed to direct the safe and effective operation* of Fuels Department.” (Opinion 14).
- i. “The proximate cause of the fuel spilled from the fire suppression system retention line on 20 November 2021 was a *failure to properly account for the fuel spilled on 6 May 2021 (human error)*, as discussed above.” (Opinion 20).
- j. “The Red Hill rover *inadvertently* struck the drain valve hand wheel with the passenger cart of a train, causing the PVC pipe to crack and leak. This train is used to transit the tunnel system and *likely contacted the valve hand wheel multiple times, weakening and finally cracking the pipe.* FLC Pearl Harbor conducted a preliminary inquiry regarding this event, and the report postulates *excessive speed* may have caused the train to jump. The investigation team assesses it is more likely that the weight of fuel in the 14-inch diameter PVC pipe caused it to sag over time. Worn paint on the hand wheel suggests the train rubbed against it on several occasions.” (Opinion 21).
- k. “The fire suppression system is *poorly designed and has not been properly maintained.* Portions of the return line are constructed of steel and others are constructed of PVC, which is vulnerable to damage in an industrial environment.” (Opinion 22).
- l. “FLC Pearl Harbor personnel *were not trained or equipped to stop the source of the fuel spill. A low level of knowledge* of the fire suppression system by initial responders *resulted in*

confusion, inaccurate reporting, and ineffective actions.” (Opinion 23).

- m. “Leaders at the scene *failed to communicate* the seriousness of the incident.” (Opinion 27).
- n. “*The proximate cause of contaminated drinking water was a failure to properly respond to the fuel spill on 20 November 2021 (human error).*” (Opinion 30).

179. As noted, the Command Investigation Report found that the design of the AFFF fire suppression system inside the Red Hill Facility significantly deviated from required code by using PVC instead of steel for most of the retention line, which “contributed to the November spill and subsequent water contamination.”

180. Although the Navy identified the deviation from the specification requirement to use steel for the retention line in June 2017, it decided to retain the majority of the PVC pipe as “primarily due to the excessive cost to replace the pipe with steel.”

181. The Command Investigation Report ultimately found that the “[t]otal fuel spilled in the May [2021] spill was 20,957 gallons, [the] maximum amount transferred to the AFFF retention system was 19,377 gallons, and total fuel that remains unrecovered is 5,542 gallons,” despite originally claiming that only 1,000 gallons was released.

I. Navy Secretarial Letters of Censure

182. The Navy's conduct was so egregious that, on September 28, 2023, Secretary of the Navy Carlos Del Toro issued secretarial letters of censure to three retired Navy admirals and seven Navy captains in leadership positions at the Red Hill Facility both before and during the November 2021 Release Incident, acknowledging that the Navy's "leadership failings" caused the November 2021 Release Incident and ensuing drinking water contamination crisis.

183. Secretary Del Toro censured retired Rear Admiral Peter Stamatopoulos, former commander of Naval Supply Systems Command, for, among other things:

- a. "[N]egligently approv[ing] an insufficient investigation of the 6 May 2021 fuel spill at Red Hill," acknowledging that "[t]he failure to fully account for the fuel spilled in the 6 May 2021 incident was the primary source of the 20 November 2021 fuel spill."
- b. "[N]egligently fail[ing] to adequately perform [his] duties" at Fleet Logistics Center Pearl Harbor, acknowledging that "[t]he inadequate response to the 20 November 2021 fuel spill was the primary cause of the drinking water contamination."

(9/28/2023 Stamatopoulos Censure Letter).

184. Secretary Del Toro censured retired Rear Admiral John Korka, who commanded Navy Facilities Engineering Command Pacific from May 2018 to September 2019 for, among other things:

- a. “[F]ail[ing] to identify and mitigate against lack of oversight of contracting and installation of a critical system at Red Hill which contributed to the fuel spill and subsequent contamination of the water distribution system.”

(9/28/2023 Korka Censure Letter).

185. Secretary Del Toro censured retired Rear Admiral Timothy Kott, commander of Navy Region Hawai‘i during the November 2021 fuel release, for, among other things:

- a. “[N]egligently fail[ing] to coordinate a training plan and execute fuel spill drills or exercises at Red Hill,” acknowledging that “[t]his failure contributed to the inadequate response to the 20 November 2021 fuel spill at Red Hill, which was the primary cause of the drinking water contamination.”
- b. “[N]egligently fail[ing] to adequately deploy [his] environmental management team and conduct an independent environmental risk assessment during the 20 November 2021 fuel spill at Red Hill,” acknowledging that had Rear Admiral Kott “ensured a proper environmental risk analysis, the risk to the drinking water system could have been identified before the first reports of contamination.”
- c. “[N]egligently fail[ing] to notify the public that the Red Hill well had been secured,” acknowledging that the Navy “had a duty to timely communicate that pertinent information to the public” and that “[t]his delay in reporting negatively impacted public trust....” (emphasis added).

(9/28/2023 Kott Censure Letter).

186. Secretary Del Toro censured these Navy admirals and seven other Navy captains for their “leadership failings” at the Red Hill Facility. In the press release announcing the censures, Secretary Del Toro explained that “[w]hat

happened was not acceptable” and that “[t]aking accountability is a step in restoring the trust in our relationship with the community.” (9/28/2023 Censure Press Release).

J. The Navy Withholds Critical Information on the Extent of the Contamination and Migration Caused By the Red Hill Facility Releases.

187. Following the spill of November 2021, the BWS repeatedly asked the Navy to be transparent with the BWS and the public regarding its investigation and findings concerning the impacts of the contamination caused by the fuel releases from the Red Hill Facility. While Navy leadership publicly assured transparency, it repeatedly stonewalled and ignored the BWS despite the Navy’s actual knowledge of the health and environmental risks posed by its Contaminant Releases to the BWS’s Impacted Water Sources.

188. On December 16, 2021, for example, the BWS sent a letter to the Navy asking the Navy to publicly release the results of its water quality testing and analytical reports by the Navy’s contract laboratory since the May 2021 Release Incident. The Navy failed to completely do so. The BWS cannot determine whether the Navy has released all the groundwater data (in unredacted form) associated with the May and November 2021 Release Incidents.

189. Because the Navy failed to timely provide critical data within its control to better understand the fate and transport of Released Contaminants in

order to protect the Aquifer and the BWS's Impacted Water Sources, the BWS sent numerous follow-up requests, including on January 5, 2022, August 18, 2022, and September 29, 2022. While the Navy provided some of the requested information, the Navy failed to respond to the vast majority of the BWS's requests for data and information, forcing the BWS to send another follow up letter on November 30, 2022.

190. On November 29, 2022, the Navy released into the environment approximately 1,300 gallons (originally reported as 1,100 gallons by the Navy) of PFAS-containing fire suppression concentrate in a tunnel near the Red Hill Facility. Yet in a letter dated December 8, 2022 to the BWS, the EPA and the DOH did not disclose that fire suppression *concentrate* was released. Rather, the letter stated AFFF *foam* was released. The DOH's December 2, 2022 press release to the public also failed to mention that AFFF *concentrate* was released, similarly stating it was *foam*. AFFF concentrate looks like water rather than foamy material and is far more dangerous than AFFF foam.

191. The November 2022 release of AFFF concentrate, however, was not an isolated incident. On December 7, 2019, a spill of up to 1,500 gallons of AFFF was released from the Red Hill Facility into the environment, requiring the surrounding contaminated soil to be excavated. The Navy, however, waited until 2023 to disclose this incident to the EPA. Then, on September 29, 2020, the fire

suppression system in an underground pump house at the Red Hill Facility was activated due to “inadvertent triggering” of the fire suppression system. At the time, the Navy advised the DOH that no AFFF concentrate was released. The Navy would later admit that 5,000 gallons of this concentrate was actually released. While the Navy claims the chemicals did not reach the environment surrounding the pump house, the floor of the pump house is made of porous concrete, creating a likely path of migration. Then, on October 26, 2021, a water pipeline ruptured releasing 300,000 gallons of water at the Red Hill Fuel Oil Recovery Facility. Upon information and belief, AFFF could have been absorbed in the soil from the December 7, 2019 AFFF incident and mixed with the water from the 300,000-gallon release on October 26, 2021. Three days later, on October 29, 2021, the Navy began draining the fuel, AFFF, and water mixture from the Fuel Oil Recovery Facility into remediation tanks. According to the Navy, the fuel, AFFF, and water mixture was not fully contained.

192. On November 30, 2022, the BWS sent a letter to the EPA and the DOH asking that the agencies demand the Navy immediately begin weekly testing of the Navy’s monitoring wells and Red Hill Shaft for PFAS. Shortly thereafter, the BWS reached out directly to the Navy and requested its sampling data from the November 29, 2022 PFAS-related release.

193. On December 15, 2022, the BWS asked the Navy if the BWS could collect samples from the Navy's water wells to gain necessary information about the contamination plume caused by the Red Hill Facility Contaminant Releases. The BWS sought to determine whether the Navy was continuing to release Contaminants such that the BWS's pumping of its Impacted Water Sources could pull in those Contaminants. On December 19, 2022, the Navy refused access to sampling.

194. On January 10, 2023, the BWS sent a letter to the DOD expressing grave concern regarding the Navy's lack of transparency in response to the November 29, 2022 release of approximately 1,300 gallons of PFAS-containing AFFF, as well as the Navy's detection of PFAS in groundwater samples taken in 2020 and 2021 from the Navy's water distribution system. The Navy intentionally withheld vital water quality information from the BWS and the public, and, on information and belief, failed to comply with DOD guidance regarding PFAS reporting and AFFF spill response handling. The BWS therefore requested that the DOD instruct the Navy to, among other things, conduct weekly testing of the Navy Red Hill monitoring wells and Red Hill Shaft for PFAS, as well as provide all past and future PFAS testing results.

195. On March 31, 2023, the BWS issued two press releases advising that it had detected PFAS in its Moanalua and Hālawā Wells.

196. On May 1, 2023, the BWS again contacted the EPA and the DOH regarding the Navy's lack of transparency and unwillingness to provide the requested data and information regarding the November 29, 2022 release of PFAS-containing AFFF. As the largest municipal drinking water utility in Hawai'i, the BWS reminded the agencies that the BWS has a constitutional trust responsibility to protect the water resources it manages. To do so, the BWS needs accurate and timely information regarding past and future threats created by the Navy's Contaminant Releases to the groundwater resources the BWS must protect.

197. Despite the BWS's repeated requests, the Navy failed to uphold its promises of transparency and deprived the BWS of water quality and hydrogeologic information solely within the Navy's possession and control.

198. On February 12, 2024, the BWS sent a letter to the DOD requesting unredacted information regarding the Navy's investigations into the Contaminant Releases, citing the completion of Red Hill Facility defueling and the BWS's need for water quality and hydrogeologic information solely within the Navy's possession and control. ("On December 15, 2023, the Navy completed work to defuel the [Red Hill Facility] of 104.6 million gallons of fuel. ... Now that the fuel has largely been removed from [the Red Hill Facility] and the facility is being decommissioned, there is no longer any basis to cite defense-sensitive critical

infrastructure as the reason to deny access and redact the contents of reports on [the Red Hill Facility]”).

199. Due to the Navy’s failure to respond, the BWS sent a follow up request on March 5, 2024, that the Navy also ignored.

200. On August 21, 2024, the BWS sent a letter to the Navy advising that the BWS detected PAHs at its ‘Aiea Wells.

201. PAHs are found in various industrial emissions and fuel sources, including jet fuel, and continuing exposure to the chemicals creates risks of cancer.

202. In the August 21 Letter, the BWS reiterated that it was forced to stop pumping these wells on December 8, 2021 as a result of the November 2021 Release Incident. Additionally, the BWS had recently commented on the Navy’s draft PFAS Release Remediation Investigation Work Plan, which was developed in response to the Navy’s 2022 releases of AFFF. The recent PAH detections at the ‘Aiea Wells, coupled with the Navy’s refusal to disclose the extent of the PFAS contamination, reinforced the urgent need for the BWS to shut down the ‘Aiea Wells and understand the full extent of past Contaminant Releases so the BWS could take appropriate protective measures. The BWS again implored the Navy to disclose requested information, including, among other things, groundwater sampling and analysis of all Red Hill Facility monitoring wells, both on and off-site.

203. On September 24, 2024, the BWS wrote again to the DOD and the Navy to follow up on its numerous past requests for unredacted information relating to the defueling and closure of the Red Hill Facility and the Navy's JBPHH water system.

204. The Navy has either entirely failed to respond to certain of the BWS's requests for data and information or it provided heavily redacted data and reports without including maps showing the area's underground geology, the location of monitoring wells and corresponding tables with sampling data.

205. Information, data, and documents concerning the Navy's Contaminant Releases, water quality at and near the Red Hill Facility, groundwater sampling results, and hydrogeology at and in the vicinity of the Facility are solely within the Navy's possession and control and unavailable to the BWS through other sources.

206. The Navy's Contaminant Releases caused the BWS to shut down its Impacted Water Sources and incur costs and expenses to investigate and take protective measures against, as best it can, the impact of the Navy's Contaminant Releases on the BWS's Impacted Water Sources.

207. Since the Navy's catastrophic release of jet fuel in November 2021, the Navy has kept its Red Hill Shaft and 'Aiea-Hālawa Shaft out of service. As a result, the JBPHH water distribution system has been solely sourced by its primary well, the Navy's Waiawa Shaft, located over 6 miles from the Red Hill Facility.

During this same time period, the BWS necessarily kept its nearby Hālawā Shaft, Hālawā Wells, and ‘Aiea Wells out of service in response to the Navy’s Contaminant Releases to minimize or prevent the BWS from drawing the Released Contaminants into its water sources.

K. The Navy Has Failed to Develop an Acceptable Groundwater Flow Model and Subsequent Fate and Transport Model.

208. While the Navy has reportedly completed studies of the subsurface environment and the resulting contamination it caused, those studies are wholly inadequate to understand the ultimate fate and transport of the Released Contaminants that have been released from the Facility.

209. Significantly, the Navy has failed to install, or exercise reasonable efforts to install, groundwater monitoring wells in priority locations requested by the BWS and the Red Hill Water Alliance Initiative to the northwest of the property where the BWS’s Hālawā Shaft is located, and to the west, where the BWS’s Hālawā Wells and ‘Aiea Wells are located.

210. In September 2024, the Navy submitted a Groundwater Model Report (“**2024 Model Report**”) representing the latest in a series of deficient deliverables required under the 2015 AOC.

211. The purpose of the 2024 Model Report was to, among other things, estimate contaminant fate and transport for past releases from the Red Hill Facility, as well as potential releases from the previously in-service USTs. It also sought to

respond to concerns by regulators in their disapproval of the Navy's prior attempts to characterize the subsurface environment underlying the Facility.

212. While the 2024 Model Report provided some additional data points regarding groundwater flow in and around the Red Hill Facility, it failed to fully, adequately, and appropriately address the regulators' concerns, and still does not sufficiently characterize the subsurface environment.

213. Moreover, the Navy failed and refused to provide the BWS with the complete 2024 Model Report, including the model files that purportedly support the findings contained therein. As a result, the BWS cannot validate or rely on the Navy's model.

214. The Navy—without explanation—again heavily redacted numerous groundwater data points—both in the text of the 2024 Model Report, as well as in the supporting maps, necessary to determine the accuracy and reliability of the Navy's findings regarding groundwater flow in and around the Facility.

215. On February 18, 2025, the EPA provided initial comments on the 2024 Model Report based on the technical review of the EPA's consultants. While the EPA recognized that the Navy made progress on characterizing groundwater flow, the EPA identified deficiencies and inaccuracies in the Navy's analyses and data. The EPA did not accept the 2024 Model Report.

216. On March 13, 2025, the DOH commented on the Navy's 2024 Model Report, identifying numerous deficiencies that needed to be addressed. The DOH first recognized "the Navy's inability over the last decade to provide a [groundwater flow model] that accurately represents known aquifer behaviors and real-world data." The DOH then explained that the "critical issues we currently face are determining the nature and extent of past releases, identifying potential remedial options, and evaluating potential risk." The DOH found that the Navy's 2024 Model Report "cannot be used to answer any of these questions."

217. Simply put, the Navy's 2024 Model Report cannot be used for its intended purpose, and the Navy has deprived the BWS and the public of necessary technical data to evaluate and respond to the Navy's Contaminant Releases. Despite the Navy having nearly a decade to fulfill the modeling requirements under the 2015 AOC, the Navy has failed to adequately characterize the groundwater flow in and around the Red Hill Facility and failed to identify the likely fate and transport of the Contaminants it negligently released into the environment.

L. Additional Impacts to the BWS's Impacted Water Sources

218. In addition to the impacts on the BWS's Impacted Water Sources identified above, the BWS has detected the following in its groundwater monitoring wells in and around the Red Hill Facility:

- a. In March 2022, TPH and PAHs were detected in the BWS groundwater monitoring well BWS2253-J1, which is located near the Facility border, southwest of the Tank System.
- b. In March 2022, TPH and PAHs were detected in the BWS ground water monitoring well DH-43. DH-43 is located in the Moanalua Valley. DH-43 is located approximately 1,500 feet southeast of the Red Hill Facility, and approximately 1 mile from the BWS's Moanalua Wells.
- c. In May 2022, TPH and PAHs were again detected in the BWS's groundwater monitoring well DH-43.
- d. In July and September 2022, PAHs were detected in the BWS's groundwater monitoring well BWS2253-J1.
- e. In May 2025, TPH was detected in the BWS's groundwater monitoring well BWS2253-J1.
- f. In May 2025, PFAS was detected in the BWS's groundwater monitoring well DH-43.

219. The BWS also detected the following PAHs and PFAS impacts to its water sources, including its Impacted Water Sources:

- a. In December 2022, PFAS was detected in a sample collected from the Hālawā Shaft. Samples collected from the Hālawā Shaft in April 2020 and April 2021 did not indicate the presence of PFAS.
- b. In every month from January through April 2023, PFAS was detected in Hālawā Wells 1 and 2.
- c. In every month from June 2023 through April 2024, PFAS was detected in Hālawā Wells 1 and 2.
- d. In every month from June 2024 through May 2025, PFAS was detected in Hālawā Wells 1 and 2.

- e. In April 2023, PAHs were detected in the BWS's Hālawā Well 1.
- f. In every month from September 2024 through May 2025, PFAS was detected in the Hālawā Shaft.
- g. In March, June, July, October, and November 2023, PFAS was detected in the Moanalua Wells.
- h. In March 2024, PFAS was detected in the Moanalua Wells.
- i. In June 2024, PFAS was detected in the 'Aiea Wells 1 and 2.

M. The Navy's Negligent Conduct Caused the BWS Significant Damages.

220. As a direct and foreseeable result of the improper, negligent and/or tortious acts and omissions of the Navy, the BWS has suffered significant monetary damages, including but not limited to the loss of use of its Hālawā Shaft, 'Aiea Wells, and Hālawā Wells, additional costs and expenses associated with those wells and other BWS wells whose operation was impacted by the shutdown of the BWS Impacted Water Sources, and investigation fees, costs, and expenses.

221. Specifically, the BWS has incurred additional fees, costs, and expenses to respond to the Navy's Contaminant Releases and because of the failure of the United States, the Navy, their employees, and agents to timely and appropriately disclose necessary data, information, and documents relating to those Releases, including, but not limited to fees, costs, and expenses for the following that the BWS would not otherwise have incurred:

- a. Implementing rigorous water quality testing protocols at certain of its drinking water well stations;
- b. Planning for permitting, and designing the installation of additional groundwater monitoring wells in the vicinity of the Facility;
- c. Increasing pumping at certain of its other drinking water well stations in an effort to temporarily replace lost water production capacity;
- d. Planning for permitting, and designing alternate water supply wells to replace the production capacity lost from the loss of use of the BWS Impacted Water Sources;
- e. Performing water treatment research and studies to determine the technology, equipment, staffing, and operations necessary to remove Released Contaminants from potable water;
- f. Paying for contractors to assist with responding to the releases, including, without limitation, conducting geoscientific, engineering, and other technical analyses;
- g. Paying for additional BWS staff time to assist with responding to the releases, including, without limitation, adjustments to water system operations, water sample collection, contract laboratory services, financial record keeping and reporting, risk management, and emergency response actions; and
- h. Ongoing work related to the foregoing during the pendency of this litigation.

222. The costs incurred or committed by the BWS to date to address the lost use of Hālawa Shaft, ‘Aiea Wells (Units 1 and 2), and Hālawa Wells (Units 1, 2, and 3), enhanced water quality testing, development of additional groundwater monitoring wells, lost water production replacement, development of alternate

water supply wells, evaluation of contamination removal technology, and associated BWS staff and consultant costs exceeds \$24 million dollars. And those costs are continuing. The BWS will incur additional costs if it must purchase and construct a water treatment facility to remediate the Released Contaminants.

223. To the extent the BWS must replace the BWS's Hālawā and 'Aiea Water Sources because of the Navy's Contaminant Releases, the estimated cost to do so ranges between \$1.18 and \$1.43 billion dollars.

224. The BWS reserves the right to identify additional damages it has or will incur.

COUNT I – NEGLIGENCE

225. The BWS incorporates by reference the foregoing paragraphs as if set forth at length herein.

226. Under Hawai'i law, a negligence claim requires: (1) a duty recognized by law that the defendant owed to the plaintiff; (2) a breach of the duty; (3) that the defendant's breach was a substantial factor in bringing about the plaintiff's harm; and (4) actual damages.

227. The United States, through the Navy and the DLA, owns and operates the Red Hill Facility and is liable for their tortious conduct.

228. The United States has a duty to exercise reasonable care in the operation and maintenance of the Red Hill Facility.

229. The United States has a duty not to endanger the health or safety of the public and the environment, not to injure groundwater and other natural resources used by the BWS, and not to interfere with the use of those resources by others, including the BWS.

230. The United States has a duty not to interfere with or contaminate the BWS's Impacted Water Sources, including its water shafts, wells, and equipment.

231. The BWS, as a municipal authority drawing groundwater from the same Aquifer as the Navy to distribute to the BWS's ratepayers, customers, and other users, was a foreseeable plaintiff to whom the Navy owed a duty to refrain from releasing Contaminants into the environment that enter or could enter the BWS's Impacted Water Sources.

232. The United States breached the duty to exercise reasonable care by, among other things:

- a. Failing to properly maintain the UST System in compliance with applicable statutory and regulatory requirements, resulting in preventable leaks, spills, and releases;
- b. Failing to properly monitor, inspect, and repair the UST System and prevent Contaminant Releases from the UST System;
- c. Failing to prevent, properly respond to, and remediate the numerous releases that occurred at the Red Hill Facility, including, but not limited to the May 2021 and November 2021 Release Incidents;
- d. Failing to adhere to proper procedures and valve sequencing, causing the May 2021 Release Incident;

- e. Failing to implement necessary and appropriate corrective actions after the May 2021 Release Incident and prior releases into and throughout the environment;
- f. Failing to adequately investigate the release of fuel into the fire suppression retention line, including the failure to oversee the investigations of independent contractors;
- g. Failing to take corrective action when it knew or should have known of the fuel buildup in the fire suppression discharge pipe after the May 2021 Release Incident to mitigate or prevent the November 2021 Release Incident;
- h. Failing to install steel piping and/or to replace PVC piping with steel piping for the fire suppression discharge pipe;
- i. Failing to operate with reasonable or due care the Facility's train car, causing it to strike the valve of a fire suppression PVC discharge pipe and release jet fuel that was negligently discharged into and subsequently stored in the fire suppression retention line;
- j. Releasing Contaminants into the same Aquifer from which the BWS draws water for its distribution system;
- k. Releasing Contaminants into the environment that entered and/or threatened the BWS's Impacted Water Sources;
- l. Damaging the BWS's property, including its water wells and equipment; and
- m. Other negligent conduct to be determined through discovery.

233. These failures were substantial factors in causing Contaminants to enter the Aquifer where the BWS draws its water supply, and in turn impacting and/or threatening the BWS's Impacted Water Sources and distribution system.

234. As a direct and proximate cause of the Navy's breach of the duty of care, the BWS has suffered substantial damages, which include, but are not limited to, the loss of use of its Hālawa Shaft, 'Aiea Wells, and Hālawa Wells, the cost to replace and/or remediate those Impacted Water Sources and/or treat contaminated groundwater, fees, costs, and expenses relating to the unavailability of those Impacted Water Sources and need to increase pumping from other sources, along with other compensable damages.

235. The Navy's actual and threatened releases were a substantial factor, and in fact the only reason the BWS shut down its Hālawa Shaft, 'Aiea Wells, and Hālawa Wells in December 2021 in response to the Navy's Contaminant Releases.

236. The BWS is entitled to actual damages in an amount to be determined at trial sufficient to compensate the BWS for the negligence of the United States.

COUNT II – NUISANCE

237. The BWS incorporates by reference the foregoing paragraphs as if set forth at length herein.

238. The BWS is, and during all pertinent times was, in lawful possession of its Impacted Water Sources, wells, and equipment, and had the right to use them in managing O'ahu's municipal water resources and distribution system and in withdrawing water from the Aquifer.

239. The United States owned and materially controlled the Red Hill Facility in close proximity to the BWS's water wells and equipment and had actual knowledge of the BWS's use of the Aquifer to obtain and distribute potable drinking water to the public.

240. Through the conduct described herein, the United States created, contributed to, and/or maintained a nuisance; that is, releasing Contaminants into O'ahu's Sole Source Aquifer, and in turn, impacting and/or threatening the BWS's Impacted Water Sources and distribution system.

241. The United States is liable for creating a condition that interfered with the BWS's free use, possession, or enjoyment of its property, including its Impacted Water Sources, wells, and equipment.

242. The United States has impaired the BWS's right to use and enjoy its property by allowing numerous Contaminant Releases from the Red Hill Facility into the environment, including the Aquifer from which the BWS draws its water supply for its distribution system.

243. The nuisance caused by the United States has also created significant health risks associated with contamination of the Aquifer that supplies the BWS's distribution system.

244. The United States knowingly, recklessly, and/or negligently engaged in conduct that unreasonably interferes with the BWS's property rights.

245. The United States knew or should have known that the Contaminant Releases from the Facility would enter the Aquifer that supplies the BWS's distribution system.

246. As a direct and proximate result of the United States' tortious acts or omissions, the BWS suffered, now suffers, and will continue to suffer damages, including the loss of use of its water wells and equipment, need to develop replacement water sources, increased operating costs, and other fees, costs and expenses related to the Navy's releases and the BWS's response thereto.

247. The United States has failed to abate the nuisance.

248. The United States' improper, reckless and/or negligent operation of the Red Hill Facility constitutes a series of recurring abatable nuisances, which the United States failed to remedy within a reasonable period of time, and for which the United States is liable to the BWS.

249. Because the United States of America interfered with the BWS's free use, possession, or enjoyment of its property, including its wells and equipment, the BWS is entitled to damages in an amount to be determined at trial.

COUNT III - TRESPASS

250. The BWS incorporates by reference the foregoing paragraphs as if set forth at length herein.

251. The United States operated the Red Hill Facility and stored millions of gallons of Contaminants in the USTs and also used Contaminants, such as PFAS, lead, and VOCs, in its operations.

252. During the relevant time period, the United States recklessly or negligently released at least hundreds of thousands of gallons of Contaminants, including petroleum hydrocarbons and PFAS, into the environment, contaminating O‘ahu’s Sole Source Aquifer, the same aquifer that supplies the BWS’s distribution system.

253. The Contaminants physically invaded the Aquifer that supplies the BWS’s distribution system.

254. The Contaminants released into the environment by the Navy impacted and/or threatened the BWS’s Impacted Water Sources and distribution system.

255. The Contaminants interfered with the BWS’s ability to use, possess, and enjoy its Impacted Water Sources, wells, and equipment.

256. The BWS has not consented to, and does not consent to, the invasion of the Aquifer that supplies the BWS’s distribution system by Contaminants released from the Red Hill Facility.

257. The BWS is, and during all pertinent times was, in lawful possession of its Impacted Water Sources, wells, and equipment, and had the right to use them in managing O‘ahu’s municipal water resources and distribution system.

258. The United States’ invasions are continuing and ongoing, and each separate invasion of Contaminants constitutes a new trespass each time Contaminants are detected in the Aquifer that supplies the BWS’s distribution system and impacts the BWS’s Impacted Water Sources.

259. As a direct, proximate, and foreseeable result of the United States’ trespasses, the BWS has suffered, now suffers, and will continue to suffer invasion of its property rights and damages to its Impacted Water Sources, wells, and equipment.

260. Because of the United States’ trespasses, the BWS has incurred, and will continue to incur expenses and other damages in an amount to be proven at trial.

COUNT IV - VIOLATION OF HERL, H.R.S. §§ 128D-1, 5, 6 AND 8

261. The BWS incorporates by reference the foregoing paragraphs as if set forth at length herein.

262. The United States, through its agencies (including the Navy and the DLA), at all times material to this lawsuit, owned and operated the Red Hill

Facility, staffed its facilities and vehicles with its agents, servants, and employees, and stored petroleum hydrocarbon products and PFAS-containing products there.

263. The United States is a “person” as defined in H.R.S. § 128D-1.

264. The United States is an “owner” or “operator” as defined in H.R.S. § 128D-1.

265. The United States is a covered person and “Potentially Responsible Party” under HERL.

266. The Red Hill Facility is a “facility” as defined in H.R.S. § 128D-1.

267. The United States released and/or threatened to release hazardous substances (as defined in H.R.S. § 128D-1) into the environment, thereby contaminating O‘ahu’s Sole Source Aquifer that supplies the BWS’s distribution system, and in turn impacting and/or threatening the BWS’s Impacted Water Sources and distribution system.

268. As stated herein, the United States by its conduct did willfully, knowingly or recklessly fail to comply with the provisions of H.R.S. § 128D-8(b).

269. As a result, the BWS has sustained damages, as stated more fully herein.

270. The response costs incurred by the BWS were necessary and consistent with H.R.S. Chapter 128D, the State Contingency Plan of the State of

Hawai‘i as set forth in HAR Chapter 451, and other applicable administrative rules of the State of Hawai‘i.

271. The United States is liable to the BWS for all costs of removal and remedial actions under H.R.S. § 128D-6.

272. The United States is liable to the BWS for injury to, destruction of, loss of, or loss of use of natural resources, including the reasonable costs of assessing such injury, destruction, or loss resulting from such releases under H.R.S. § 128D-6.

273. The United States is liable for any other necessary costs of response incurred by the BWS under H.R.S. §§ 128D-5, 6 and 8.

V. NO EXCEPTIONS TO FTCA APPLY

274. The BWS incorporates by reference the foregoing paragraphs as if set forth at length herein.

275. The BWS’s claims are not subject to any of the exceptions set forth in 28 U.S.C. § 2680.

276. None of the United States’ actions described herein arose under the government’s discretionary decisions or subject to policy decisions.

277. The BWS is not an enlisted person and therefore, has not assumed the inherent risks or uncertainties associated with military service.

278. The United States, including the Navy, and their respective employees, agents, and persons under their direction or supervision, failed to exercise due care in the execution of its duties as described herein.

VI. LIABILITY OF UNITED STATES

279. This case is commenced and prosecuted against the United States of America in compliance with Title 28 U.S.C. §§ 2671–80, the Federal Tort Claims Act, based on the Navy’s and the DLA’s conduct. Liability of the United States is predicated specifically on 28 U.S.C. § 2674 because the resulting damages for which the Complaint is made were proximately caused by the negligence, wrongful acts or omissions of representatives, employees, or agents of the United States of America working for the Navy and the DLA, while acting within the scope of their office, employment, or agency under circumstances where the United States of America, if a private person, would be liable to the BWS in the same manner and to the same extent as a private individual.

280. Through the Federal Tort Claims Act, the United States has waived its sovereign immunity for the acts and omissions described here. *E.g., Evans v. United States*, 876 F.3d 375, 380 (1st Cir. 2017), *cert. denied*, 139 S. Ct. 81 (2018).

281. The United States has also waived its sovereign immunity with respect to HERL for the acts and omissions described here, including in connection with the removal and remedial action required as a result of the Navy’s wrongful

and negligent conduct. *See* CERCLA § 120(a)(4), 42 U.S.C. § 9620(a)(4) (“State laws concerning removal and remedial action, including State laws regarding enforcement, shall apply to removal and remedial action at facilities owned or operated by a department, agency, or instrumentality of the United States . . .”). *E.g., Port of Tacoma v. Todd Shipyards Corp.*, No. C08-5132BHS, 2008 WL 4454136, at * 7 (W.D. Wash. Sept. 30, 2008) (acknowledging waiver of sovereign immunity under Washington’s CERCLA analogue for facilities currently operated by the federal government); *City of Fresno v. United States*, 709 F. Supp. 2d 888, 908 (acknowledging waiver of sovereign immunity under California’s CERCLA analogue for facilities owned and operated by federal government); *see also United States v. Com. of Pa. Dep’t Env’t Res.*, 778 F. Supp. 1328, 1330 (M.D. Pa. 1991).

VII. CONDITIONS PRECEDENT

282. Pursuant to 28 U.S.C. § 2675(a), on October 24, 2023, the BWS timely presented its claims to the United States Department of Navy by submitting form SF-95 to the Office of the Judge Advocate General, Tort Claims Unit Norfolk, 9620 Maryland Avenue, Suite 205, Norfolk, Virginia 23511-2949, via Federal Express and E-Mail (tortclaimsunit@us.navy.mil). *See* Forms SF-95 and cover letter, attached as Exhibit 1.

283. On December 20, 2023, Kevin L. Walker, Tort Claims Paralegal, Tort Claims Unit Norfolk, Office of the Judge Advocate General, Department of the Navy, acknowledged receipt of the BWS's claims.

284. On January 10, 2025, the Navy wholly denied the BWS's claim under the Federal Tort Claims Act. The Navy's denial started the six-month statute of limitations period applicable to the BWS's Federal Tort Claims Act claim. *See* Exhibit 2.

285. The BWS has exhausted its administrative remedies under the Federal Tort Claims Act and has fully complied with the statutory prerequisites for bringing this tort action against the United States.

VIII. DAMAGES

286. As a result of the wrongful or negligent conduct of the United States of America, including the United States Department of the Navy and Defense Logistics Agency and their respective employees, agents or representatives, the BWS has sustained damages including:

- a. Fees, costs and expenses to respond to Contaminant Releases from the Red Hill Facility, including the investigation and mitigation of the impacts and installation of monitoring wells;
- b. Loss of Use of the BWS's Impacted Water Sources due to the Navy's Contaminant Releases;
- c. Fees, costs and expenses to increase production from the BWS's water sources that were not impacted by the Navy's Contaminant Releases;

- d. The cost to replace the Impacted Water Sources impacted by the Navy's Contaminant Releases;
- e. The restoration of the BWS's groundwater to its pre-impact condition or to remediate the groundwater, including, but not limited to, damages for the costs to construct, operate, and maintain a water treatment facility to treat contaminated groundwater caused by the Navy's Contaminant Releases;
- f. Past and future loss of enjoyment of property;
- g. Prejudgment and post-judgment interest as provided by law, at the maximum legal rate; and
- h. Such other and further relief to which the BWS may be justly entitled.

PRAYER FOR RELIEF

WHEREFORE, for the foregoing reasons, the BWS seeks the following relief:

- a. Judgment in favor of the BWS and against the United States on each and every Count;
- b. Compensatory damages, in an amount to be determined at trial;
- c. Damages for the fees, costs and expenses incurred by the BWS to respond to the Contaminant Releases from the Red Hill Facility;
- d. Damages associated with investigation and mitigation of impacts caused by the Navy's Contaminant Releases from the Red Hill Facility, including but not limited to the installation and operation of monitoring wells;
- e. Damages associated with investigation, design, and construction replacement water sources;

- f. Damages and/or civil penalties under the Hawai‘i Environmental Resource Law;
- g. Damages associated with loss of use of the BWS’s Impacted Water Sources;
- h. Prejudgment and post-judgment interest as provided by law, at the maximum legal rate; and
- i. Such other and further relief to which the BWS may be justly entitled.

Date: July 01, 2025

Respectfully submitted,

KOBAYASHI SUGITA & GODA

By: /s/ Joseph A. Stewart
JOSEPH A. STEWART
STEPHEN G.K. KANESHIRO
REECE Y. TANAKA

Attorneys for Plaintiff
BOARD OF WATER SUPPLY,
CITY AND COUNTY OF HONOLULU

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF HAWAII

BOARD OF WATER SUPPLY, CITY
AND COUNTY OF HONOLULU,

Plaintiff,

vs.

UNITED STATES OF AMERICA,

Defendant.

CIVIL NO. _____

DEMAND FOR JURY TRIAL

DEMAND FOR JURY TRIAL

Plaintiff BOARD OF WATER SUPPLY, CITY AND COUNTY OF
HONOLULU, hereby demands a jury trial on all issues so triable. This demand is
made pursuant to Rule 38 of the Federal Rules of Civil Procedure.

Date: July 01, 2025

KOBAYASHI SUGITA & GODA

By: /s/ Joseph A. Stewart

JOSEPH A. STEWART

STEPHEN G.K. KANESHIRO

REECE Y. TANAKA

Attorneys for Plaintiff

BOARD OF WATER SUPPLY,
CITY AND COUNTY OF HONOLULU